

EXHIBIT 7

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1 Vol. I
2 Pgs. 1-171
Exs. 1-3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

10 Civil Action No.
11 1:19-cv-12235-LTS

12 v.

13 QUOTEWIZARD.COM, LLC,

14 Defendant.

17 REMOTE DEPOSITION OF

18 ANYA VERKHOVSKAYA

19 | Via Zoom

20 Friday, December 15, 2023

21 9:33 a.m. - 4:38 p.m.

Lori J. Atkinson
Court Reporter

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<p>1 A. Christina Peters.</p> <p>2 Q. Anyone else?</p> <p>3 A. No.</p> <p>4 Q. What is Christina Peters's role on your staff?</p> <p>5 A. She is the vice president of class expert scope.</p> <p>6 Q. She was involved in the work that you performed in this case?</p> <p>7 A. Yes.</p> <p>8 Q. Were there other members of your team who were involved in the work that you performed in this case beyond Christina Peters?</p> <p>9 A. Yes.</p> <p>10 Q. Could you please tell me who those people are?</p> <p>11 A. Andrey Niaitin.</p> <p>12 Q. Is Andrey, A-N-D-R-E-I?</p> <p>13 A. E-Y.</p> <p>14 Q. I will let you spell the last name?</p> <p>15 A. N-I-A-I-T-I-N.</p> <p>16 And Irina, I-R-I-N-A, Verkhovskaya, spelled with an "I" versus a "Y" at the end.</p> <p>17 Q. V-E-R-K-H-O-V-S-K-A-I-A?</p> <p>18 A. That's correct.</p> <p>19 Q. Are there other members of your team who did work on this case beyond the ones that we've discussed?</p>	Page 7	<p>1 like my background and qualifications, I drafted the rest.</p> <p>3 Q. Christina Peters was involved in assisting and overseeing the data analysis and then reviewing or -- was it reviewing your report, is that what you said?</p> <p>6 A. Reviewing and proofreading.</p> <p>7 Q. Proofreading. That's what you said. Thank you.</p> <p>8 Did she have any other role in this case?</p> <p>9 A. She also performed some of the quality assurance work.</p> <p>11 Q. How, if at all, did the quality assurance work that she did differ from the quality assurance work that Andrey Niaitin did?</p> <p>14 A. Her work mainly consisted making sure that the data results were interpreted correctly by the data team and appeared properly in the reports.</p> <p>17 Q. All right. Now you mentioned the data team. Who is the data team?</p> <p>19 A. Irina Verkhovskaya and Andrey Niaitin for this case.</p> <p>21 Q. Now let's talk about Irina Verkhovskaya. I understand the spelling is different. Is she a relative of yours?</p> <p>24 A. She is.</p>	
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<p>1 A. No.</p> <p>2 Q. Can you tell me what Andrey Niaitin's role was in this case?</p> <p>3 A. He is a data analyst and quality assurance person.</p> <p>4 Q. What kind of quality -- let's be more narrow. What kind of quality assurance services did he provide with respect to your assignment on this case?</p> <p>5 A. He independently repeated some of the data analysis and checked the code of the data analysis that was conducted to make sure the code met my specifications.</p> <p>6 Q. We will get into some more detail later. Right now I want to understand what different people did.</p> <p>7 So Christina Peters you mentioned was a VP of class of notice or administration?</p> <p>8 A. Class experts group.</p> <p>9 Q. Experts group.</p> <p>10 What was her role in the work done on this case?</p> <p>11 A. She assisted in overseeing the data analysis as well as proofreading the report.</p> <p>12 Q. Who actually drafted the report?</p> <p>13 A. I did.</p> <p>14 Q. All of it?</p> <p>15 A. Other than some template language that I used</p>	Page 8	<p>1 Q. What is her relationship to you?</p> <p>2 A. She is my sister.</p> <p>3 Q. What role did she play in the work that she performed in this case?</p> <p>5 A. She was our main data analyst.</p> <p>6 Q. You mentioned several times data analysis or data analyst, can you explain to me what specifically you mean when you use those terms?</p> <p>9 A. Yes. Data analysts write sequel code to meet the criteria that I set forth to produce results that I request.</p> <p>11 Q. They are trying to write computer code that will meet criteria set by you to achieve results that you are looking for?</p> <p>14 A. Correct.</p> <p>15 Q. Do you write any of the code yourself?</p> <p>16 A. I do not.</p> <p>17 Q. Is there anyone else who performed work in conjunction with the opinions that you provided in this case apart from the individuals on your team that we have mentioned so far?</p> <p>21 A. No.</p> <p>22 Q. I would like to move on a bit to your qualifications. If you could just walk me through what, if any, formal training that you have that bears on the</p>	

<p>1 opinions that you offer in this case?</p> <p>2 MR. PARONICH: I object to form.</p> <p>3 You can answer.</p> <p>4 BY MR. SITTER:</p> <p>5 Q. You can answer the question.</p> <p>6 Would you like me to repeat it?</p> <p>7 A. No.</p> <p>8 I do not have any formal training in data</p> <p>9 analysis. I have 20 years of experience doing the work.</p> <p>10 Q. You linked that specifically to data analysis. I</p> <p>11 want to bring it a little broader. Is there any formal</p> <p>12 training that you have had that bears on the opinions</p> <p>13 that you've offered in this case at all?</p> <p>14 MR. PARONICH: Same form objection.</p> <p>15 You can answer.</p> <p>16 A. Not formal training.</p> <p>17 Q. Thank you.</p> <p>18 Let's talk really quickly about your educational</p> <p>19 experience. Did you go to college?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Where did you go to college?</p> <p>22 A. I went to Molloy College on Long Island and then</p> <p>23 Brown University.</p> <p>24 Q. Have you obtain a degree from Molloy College?</p>	<p>Page 10</p> <p>1 MR. PARONICH: Object to form.</p> <p>2 You can answer.</p> <p>3 A. There are several fields of expertise; data</p> <p>4 analysis for complex litigation, in this particular case</p> <p>5 a class action; as well as expertise in notice claims</p> <p>6 and litigation support services.</p> <p>7 Q. Okay. I want you to correct me if you don't</p> <p>8 agree with this statement, I will put that out there</p> <p>9 right now, I am trying to get an accurate sense of what</p> <p>10 your testimony is.</p> <p>11 Are you saying that your field to the extent that</p> <p>12 there is one, involves data analysis, expertise, and</p> <p>13 class notice expertise?</p> <p>14 MR. PARONICH: Objection to form.</p> <p>15 You can answer.</p> <p>16 BY MR. SITTER:</p> <p>17 Q. Let me try to reframe that, because it seems to</p> <p>18 be confounding. And I'm not sure it was a good question.</p> <p>19 Unfortunately, that is not the first or last time that</p> <p>20 has happened.</p> <p>21 I'm trying to get a sense of, do you consider</p> <p>22 yourself part of any particular professional field?</p> <p>23 A. There are two fields of expertise. One field is</p> <p>24 data analysis for complex litigation. And another field</p>
<p>1 A. Yes.</p> <p>2 Q. What degree did you obtain?</p> <p>3 A. Bachelor's of science degree, nursing.</p> <p>4 Q. Then you mentioned that you went to Brown</p> <p>5 University, was that immediately after going to</p> <p>6 undergraduate?</p> <p>7 A. No.</p> <p>8 Q. So how much time was there between when you</p> <p>9 finished your undergrad degree and when you went to</p> <p>10 Brown?</p> <p>11 A. Many years. I graduated from Brown last year</p> <p>12 with an MBA.</p> <p>13 Q. Was it a general MBA or was there any field of</p> <p>14 specialization within the MBA?</p> <p>15 A. Humanities.</p> <p>16 Q. Can you explain to me a little about what that</p> <p>17 degree work is? I'm not familiar with an MBA in</p> <p>18 humanities.</p> <p>19 A. It focuses on socioeconomic and business; how</p> <p>20 business affects societies.</p> <p>21 Q. The work that you did in this case, and I</p> <p>22 understand you have done similar work in many cases in</p> <p>23 the past. How, if at all, would you define the field of</p> <p>24 people who do work like the work that you do?</p>	<p>Page 11</p> <p>1 is notice claims and a class action litigation support</p> <p>2 services.</p> <p>3 Q. Are there any professional organizations that you</p> <p>4 are a member of that are associated with either of those</p> <p>5 fields?</p> <p>6 A. No.</p> <p>7 Q. Have you published any work in either of those</p> <p>8 fields?</p> <p>9 A. No.</p> <p>10 Q. Are there any professional guides or standards in</p> <p>11 either of those fields that you use or -- let me be more</p> <p>12 specific -- that you use in this case to reach the</p> <p>13 opinions that you offer?</p> <p>14 MR. PARONICH: Objection.</p> <p>15 You can answer.</p> <p>16 A. In my report, I cite some of the best practices</p> <p>17 for notice reaching frequency. Other than that, no.</p> <p>18 Q. Okay. So the only professional guide or standard</p> <p>19 that informed the opinions in your case are the</p> <p>20 resources that you cited in your report regarding best</p> <p>21 standards and class notice; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Can you explain to me your understanding of the</p> <p>24 scope for which you were retained in this case?</p>

<p style="text-align: right;">Page 18</p> <p>1 QuoteWizard from third-party lead generators.</p> <p>2 Q. Right. My question is, I understand that was the</p> <p>3 step, how did you accomplish that step? What was your</p> <p>4 methodology?</p> <p>5 A. It was my understanding that the data that was</p> <p>6 provided to me was the leads data was separated in two</p> <p>7 main categories. One category was the leads that we</p> <p>8 reference as onsite, those leads were created by</p> <p>9 accessing the QuoteWizard's website. And my instructions</p> <p>10 were to exclude those leads and to limit the leads only</p> <p>11 to non-onsite leads or inbound leads.</p> <p>12 Q. Okay. Understood. At this -- did I interrupt</p> <p>13 you?</p> <p>14 A. I just want to say that we went through this data</p> <p>15 analysis and all of the onsite telephone numbers were</p> <p>16 removed from further analysis.</p> <p>17 Q. Understood. So at this step the data was grouped</p> <p>18 into onsite leads and I think you called them inbound</p> <p>19 third-party lead data? And at this step -- let me start</p> <p>20 there. Is that correct?</p> <p>21 A. Inbound or non-onsite.</p> <p>22 Q. Okay. So we have two big categories. What would</p> <p>23 you like to call the first category? Inbound? Onsite?</p> <p>24 A. Onsite.</p>	<p style="text-align: right;">Page 20</p> <p>1 those leads should be excluded from your analysis?</p> <p>2 Was it simply because they were from the</p> <p>3 QuoteWizard website?</p> <p>4 A. That's my understanding.</p> <p>5 Q. Was there any other explanation?</p> <p>6 A. I believe all other reasons are legal reasons.</p> <p>7 Q. Does that mean you are not familiar with what</p> <p>8 they are?</p> <p>9 A. Correct.</p> <p>10 Q. Does your analysis assume that the accuracy of</p> <p>11 the inbound data -- sorry -- non-onsite data is less</p> <p>12 reliable, because it comes from third-party vendors?</p> <p>13 A. No.</p> <p>14 Q. Does it -- does your analysis assume that the</p> <p>15 non-onsite data is less reliable than the onsite data?</p> <p>16 A. No.</p> <p>17 Q. Are you saying that your analysis does not make</p> <p>18 any assumptions regarding the accuracy of the onsite</p> <p>19 data compared to the non-onsite data?</p> <p>20 A. That's correct.</p> <p>21 Q. Beyond the fact that the onsite data was onsite</p> <p>22 data, it came from the QuoteWizard website, you are not</p> <p>23 aware of any other reason, apart from the fact that you</p> <p>24 were instructed to do so, why you excluded that data</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. We will call the first category onsite and the</p> <p>2 second category we will call what?</p> <p>3 A. Non-onsite.</p> <p>4 Q. Non-onsite. That's easy. I'm writing it down.</p> <p>5 So if I understand your testimony, I believe you</p> <p>6 said that you were instructed to exclude the onsite</p> <p>7 leads from your analysis. Is that accurate?</p> <p>8 A. That's correct.</p> <p>9 Q. Who instructed you to exclude the onsite leads</p> <p>10 from your analysis?</p> <p>11 A. Class counsel.</p> <p>12 Q. Were you given any reasons why you should exclude</p> <p>13 those leads from your analysis?</p> <p>14 A. As stated in my report, it is my understanding</p> <p>15 that those leads were created on QuoteWizard's website.</p> <p>16 And there is a claim that those leads had originated, as</p> <p>17 I stated in my report, originated from sources owned by</p> <p>18 QuoteWizard itself. So it originated from QuoteWizard.</p> <p>19 Q. Right. And I understand the distinction that you</p> <p>20 made between the onsite leads and the non-onsite leads.</p> <p>21 I understand that you were instructed to exclude the</p> <p>22 onsite leads. I understand that you are saying that</p> <p>23 those originated from QuoteWizard's website.</p> <p>24 My question is: Were you given a reason why</p>	<p style="text-align: right;">Page 21</p> <p>1 from your analysis?</p> <p>2 A. That's correct.</p> <p>3 Q. Did you perform any testing to confirm whether</p> <p>4 the onsite data was more reliable than the non-onsite</p> <p>5 data?</p> <p>6 A. No. I had no reasons to doubt the reliability of</p> <p>7 any of the datasets provided to me.</p> <p>8 Q. Do you know if QuoteWizard did any testing on the</p> <p>9 accuracy of its third-party lead data from vendors?</p> <p>10 A. I do not.</p> <p>11 Q. All right. Let's talk about your methodology,</p> <p>12 the second substep of this one. You have a methodology</p> <p>13 for trying to limit the class to people who the texts</p> <p>14 were authorized?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. And it sounds like what you are doing at</p> <p>17 this step is really comparing the results from step one</p> <p>18 with the Drips API data and then removing any numbers</p> <p>19 that do not appear on both?</p> <p>20 A. That's correct.</p> <p>21 Q. Were there any other steps that you performed at</p> <p>22 this stage of your analysis regarding identifying those</p> <p>23 numbers that were sent to Drips by QuoteWizard with</p> <p>24 authority to text?</p>

6 (Pages 18 - 21)

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<p>1 A. Not at this step.</p> <p>2 Q. And apart from the fact that a particular number</p> <p>3 appears in both sets of data, did you look at any other</p> <p>4 evidence or factors before concluding that the text was</p> <p>5 received by a particular consumer at that telephone</p> <p>6 number?</p> <p>7 A. We also looked at the message direction and</p> <p>8 delivery status.</p> <p>9 Q. Which is in the data I just referenced; correct?</p> <p>10 A. Correct.</p> <p>11 Q. Apart from looking at the data -- the numbers in</p> <p>12 both sets of that data and the fields, as you indicate,</p> <p>13 did you look at any other evidence or factors before</p> <p>14 concluding that a particular text was received at a</p> <p>15 particular number?</p> <p>16 A. No.</p> <p>17 Q. Have you considered any scenarios in which a</p> <p>18 telephone number might appear in both sets of records,</p> <p>19 but the consumer may not have actually received the</p> <p>20 text?</p> <p>21 A. Yes. That's why the methodology includes some of</p> <p>22 the verification steps later on.</p> <p>23 Q. You are talking about the fact that there is an</p> <p>24 indication somebody responded to the text?</p>	<p>1 phone between myself and the data team. And we made</p> <p>2 sure that the results that appeared in sequel database</p> <p>3 were the same that were included in the report.</p> <p>4 Q. Okay. Did you perform quality control measures</p> <p>5 to ensure that non-working telephone numbers were</p> <p>6 removed from the list at this stage of your analysis?</p> <p>7 A. Not at this stage.</p> <p>8 Q. Are you saying that was done at some other stage?</p> <p>9 A. Well, if individuals responded back then the</p> <p>10 telephone numbers must be working.</p> <p>11 Q. They must have been working at some point in</p> <p>12 time; right?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know when they were working and when they</p> <p>15 were not working?</p> <p>16 A. Well, they were working when they received the</p> <p>17 text and when they responded to the texts.</p> <p>18 Q. My question is did your team perform any analysis</p> <p>19 to tell when a number was working and when it was not</p> <p>20 working?</p> <p>21 A. No.</p> <p>22 Q. Next step in your methodology is to limit this</p> <p>23 universe to folks who in response to their receipt of</p> <p>24 QuoteWizard text messages made a specific request that</p>
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<p>1 A. That's correct.</p> <p>2 Q. But at this step of the analysis, there wasn't</p> <p>3 any method for trying to identify that; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. In performing your analysis, did you see any</p> <p>6 instances in which there was a discrepancy between the</p> <p>7 Twilio and Bandwidth records for a particular telephone</p> <p>8 number?</p> <p>9 A. Not the telephone numbers that we worked with.</p> <p>10 Q. It's your testimony that the telephone numbers</p> <p>11 that appear on your class lists, as far as you are aware</p> <p>12 there is no discrepancy between the Twilio data for that</p> <p>13 number and the Bandwidth data for that number?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Did you perform any quality control measures to</p> <p>16 ensure that the Bandwidth and Twilio records --</p> <p>17 actually, scratch that.</p> <p>18 Did you perform any -- well, let's talk about</p> <p>19 what if any quality control measures were applied at</p> <p>20 this particular step of your methodology. If there are</p> <p>21 any, could you please share them with me?</p> <p>22 A. Yes. At this particular step we independently</p> <p>23 checked the results of the analysis. We reviewed the</p> <p>24 code by several individuals. We had discussions by</p>	<p>1 the text cease; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. I want to be clear, you can tell me if I'm wrong,</p> <p>4 you are not offering an opinion that if a number appears</p> <p>5 in the Do Not Call files that establishes that QuoteWizard</p> <p>6 lacked valid consent under the TCPA to place the texts</p> <p>7 at issue, are you?</p> <p>8 A. I'm not offering that opinion.</p> <p>9 Q. You not offering an opinion one way or the other</p> <p>10 as to whether a particular consumer consented to</p> <p>11 receiving a particular text, are you?</p> <p>12 A. I'm not.</p> <p>13 Q. Can you explain to me what your use of the Do Not</p> <p>14 Call files was supposed to be a proxy for? If that is</p> <p>15 accurate?</p> <p>16 A. Yes.</p> <p>17 Do Not Call files are defined in paragraph 4 of</p> <p>18 my report. And, as stated in my amended report, the</p> <p>19 definition of Do Not Call files missed two files, which</p> <p>20 is, I believe, Drips 05 and 08.</p> <p>21 Q. I guess, were you using these files to try to</p> <p>22 identify consumers who had complained about receiving</p> <p>23 the texts?</p> <p>24 A. That's correct.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Did you personally review the text responses to 2 evaluate whether a customer was complaining or not? 3 A. At some step -- some stage, I did. 4 Q. Okay. Can you walk me through your methodology 5 for determining whether a particular consumer was 6 complaining about receiving a text? 7 A. My methodology was to have -- to work with class 8 counsel and receive a set of instructions from class 9 counsel which language should be removed. 10 Q. Okay. So at this step of the analysis you 11 received a list of terms or language from your 12 attorneys; is that correct? 13 A. Not at this step. 14 Q. Well, this is the step at which your methodology 15 is supposed to limit the class to those people who 16 requested that -- made a specific request that the text 17 cease; correct? 18 A. Correct. And at this step in my analysis, I 19 removed all telephone numbers that were on the Do Not 20 Call -- I'm sorry -- I removed all telephone numbers 21 that were not on the set of files. 22 Q. Okay. So is another way of saying that, again 23 tell me if I'm not right -- is another way of saying 24 that your analysis assumes that if somebody's number is</p>	<p style="text-align: right;">Page 32</p> <p>1 just talking about in your original report and in your 2 original report, is it fair to say that the opinion that 3 you were offering is that that -- or assumed that if a 4 number appeared on one of the Do Not Call files that 5 established that the consumer had made a specific 6 request that the text cease? 7 A. Correct. 8 MR. PARONICH: Ben, just to hop in here, we 9 are about two minutes away from when we need to take 10 that break for my hearing. 11 MR. SITTER: Would you like to do that now? 12 I'm fine with that. 13 MR. PARONICH: If it's a natural breaking 14 point. 15 MR. SITTER: Let's go off the record. 16 (Break in the proceedings.) 17 MR. SITTER: Let's go back on. So we took a 18 short break so plaintiff's counsel could attend a hearing. 19 We are going to take another break at 11 for that purpose 20 and instead we will go ahead and keep moving for now as 21 much as we can. 22 BY MR. SITTER: 23 Q. When we took a pause, Ms. Verkhovskaya, we were 24 talking about your first opinion, methodology, and</p>
<p style="text-align: right;">Page 31</p> <p>1 on one of those Do Not Call files that means that that 2 particular consumer complained about -- made a specific 3 request that the text cease? 4 A. At this step, yes. 5 Q. That is an assumption that is built in at this 6 step? 7 A. Correct. 8 Q. Now, the actual content of those text messages 9 that were sent from the consumer to QuoteWizard is 10 available for some percentage of the people on your 11 list; correct? 12 A. That's correct. 13 Q. Did your methodology involve you or anyone on 14 your team reviewing the content of those texts from the 15 consumer to QuoteWizard? 16 A. Not at this step. 17 Q. Was there another step at which somebody, either 18 you or on your team, did that? 19 A. Yes. 20 Q. Where was that? 21 A. It is on the rebuttal report. 22 Q. We will break it down one-by-one to try to keep 23 things clean. 24 On this particular question, to be clear, I'm</p>	<p style="text-align: right;">Page 33</p> <p>1 specifically the part of it that dealt with identifying 2 those folks who had made a specific request that the 3 text cease. 4 Do you recall that? 5 A. Yes. 6 Q. Does your analysis on this point account for the 7 possibility that a consumer happily texted with QuoteWizard 8 to obtain an insurance quote, but then asked that the 9 text stop after receiving the quote? 10 A. At this point, I took the internal Do Not Call 11 records indication that those records were maintained 12 for consumers who requested not to be contacted at some 13 point. 14 Q. Right. I'm not pushing back on that at all. I'm 15 simply trying to ask whether in that step of your 16 analysis you account for the possibility that somebody 17 was happily texting with QuoteWizard for some period of 18 time, and then they got the insurance quote that they 19 wanted, and that's when they asked the text to stop, 20 because they had what they wanted? 21 A. Not at this step. 22 Q. Is there another step in which that analysis came 23 in or not? 24 A. No.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Your entire methodology does not account for the 2 possibility that a consumer was happily texting with 3 QuoteWizard, they got the quote that they wanted, and 4 then they asked that the text stop; correct?</p> <p>5 A. Correct.</p> <p>6 Q. So there may be many people on your class list, 7 who are only in the Do Not Call records, because they 8 requested that the text stop after they had already 9 gotten the insurance quotes that they wanted?</p> <p>10 A. That's possible.</p> <p>11 Q. I think you mentioned that you reviewed Mr. 12 Kostyun reports in this case; correct?</p> <p>13 A. That's correct.</p> <p>14 MR. SITTER: For the benefit of the court 15 reporter, Mr. Kostyun's name is, Jan, J-A-N, Kostyun, 16 K-O-S-T-Y-U-N.</p> <p>17 (Document marked as Exhibit No. 1 for 18 identification.)</p> <p>19 BY MR. SITTER:</p> <p>20 Q. Do you recall in your review of those reports, a 21 part of his rebuttal in which he listed several text 22 responses that your analysis assumes are customer 23 complains, but which appear instead to be indications of 24 interest?</p>	<p style="text-align: right;">Page 36</p> <p>1 described in my rebuttal report.</p> <p>2 Q. Okay. So the analysis that your team did of the 3 content of the text message responses from consumers, 4 was actually counsel's analysis?</p> <p>5 A. Well, it is my understanding that interpretation 6 of consent language is a legal matter and I'm not 7 qualified to make such interpretation.</p> <p>8 Q. Your methodology does state that it was able to 9 identify those consumers who made a specific request 10 that the text cease. I'm actually not talking about the 11 legal issue of whether that qualifies as consent or not 12 under the TCPA. That's not what I'm talking about.</p> <p>13 What I'm talking about is your stated methodology, 14 which says that you were able to identify those numbers 15 where consumers made a specific request that the text 16 cease. That was your step in this analysis. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. But these are examples that Mr. Kostyun identifies of 19 individuals who appear not to be complaining, but to 20 actually be requesting further communications.</p> <p>21 Would you agree with that?</p> <p>22 A. Yes.</p> <p>23 Q. Your team did not do any of its own independent 24 analysis of these text messages content to assess</p>
<p style="text-align: right;">Page 35</p> <p>1 I'm referencing, I believe, paragraphs 36 through 2 47. To be clear, this is of his rebuttal report.</p> <p>3 A. Thank you.</p> <p>4 Q. The specific examples I'm referring to are in a 5 chart in paragraph 40 on page 18 and 19.</p> <p>6 A. Yes, I can see that.</p> <p>7 Q. Some of the examples that he lists in this chart 8 as content of texts from consumers that appear to indicate 9 interest, not a complaint, were things like, quote, You 10 can call me now, if you want; quote, Please call again; 11 quote, Thank you for calling; quote, Can we continue 12 texting, because I can't talk right now; quote, Can you 13 please call me in the AM; quote, Can we continue 14 texting, because I can't talk right now.</p> <p>15 Those are some, not all, but some of the examples 16 from this list. Correct?</p> <p>17 A. Correct. He found 28 of those examples out of 18 hundreds of thousands of texts.</p> <p>19 Q. But your team didn't do any analysis of the 20 content of these text messages; correct?</p> <p>21 A. Not at this step that we are talking about.</p> <p>22 Q. Is there another step at which they did do that 23 analysis?</p> <p>24 A. The analysis was done by class counsel and it is</p>	<p style="text-align: right;">Page 37</p> <p>1 whether or not the words in their text qualified as a, 2 quote, specific request that the text cease. Is that 3 accurate?</p> <p>4 A. It is. It was my understanding that in order to 5 be included on internal Do Not Call lists, you would 6 conduct a certain step that the company would determine 7 that you qualified to be on internal Do Not Call lists. 8 And out of many thousands of texts, 28 examples, that 9 what Mr. Kostyun found seemingly do not qualify.</p> <p>10 Q. Are you -- scratch that.</p> <p>11 Do you have any personal knowledge, one way or 12 the other, regarding all of the different reasons why 13 QuoteWizard might place a telephone number on its own 14 internal Do Not Call List?</p> <p>15 A. I do not have any personal knowledge of how 16 QuoteWizard makes those determinations.</p> <p>17 Q. Okay. It is fair to say your analysis presumes 18 that if a consumer's telephone number is on one of their 19 internal Do Not Call lists that means that consumer made 20 a specific request that the text cease?</p> <p>21 A. At this particular step, it does.</p> <p>22 Q. Is there another step where that analysis is 23 impacted?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Can you walk me through that, please?</p> <p>2 A. It's in my rebuttal report.</p> <p>3 Q. Can you explain it to me, please. If you need to</p> <p>4 reference your report, that is fine.</p> <p>5 A. Thank you.</p> <p>6 So paragraph 59 of my rebuttal and 62 states that</p> <p>7 (as read) On about November 2nd I received from</p> <p>8 plaintiff's counsel a list of opt out requests listed on</p> <p>9 Exhibit J that legally was interpreted or could be</p> <p>10 interpreted as having expressed interest in Defendant's</p> <p>11 services and those text and telephone numbers were</p> <p>12 removed.</p> <p>13 Q. Okay. If I understand you, counsel made a</p> <p>14 determination regarding a set of individuals who may</p> <p>15 have an expressed interest and told you to remove them</p> <p>16 from the class list and you removed them from the class</p> <p>17 list. Is that accurate?</p> <p>18 MR. PARONICH: Objection.</p> <p>19 A. It is.</p> <p>20 Q. Did you or your team perform any of your own</p> <p>21 independent analysis regarding those numbers before</p> <p>22 removing them from your class list at the direction of</p> <p>23 counsel?</p> <p>24 A. Would you please clarify for which reason we</p>	<p style="text-align: right;">Page 40</p> <p>1 understanding that interpretation of language that</p> <p>2 constitutes interest or consent is a legal matter and it</p> <p>3 is outside of the scope of my expertise.</p> <p>4 Q. And I understand that you are not offering any</p> <p>5 opinions one way or another regarding whether a particular</p> <p>6 consumer gave consent that was valid under the TCPA.</p> <p>7 That is not one of your opinions; correct?</p> <p>8 A. Correct.</p> <p>9 Q. But one of your stated opinions is, and I quoted</p> <p>10 it several times, that you could identify people who</p> <p>11 made a specific request that the telemarketing text</p> <p>12 cease.</p> <p>13 And what I'm trying to understand is how you were</p> <p>14 able to do that apart from taking instruction from</p> <p>15 counsel?</p> <p>16 A. I took internal Do Not Call lists of the</p> <p>17 defendant and used that data to make a determination,</p> <p>18 which individuals made a request to be on that internal</p> <p>19 Do Not Call List; hence, they expressed interest that</p> <p>20 the telemarketing ceases.</p> <p>21 Q. Let me try this a different way.</p> <p>22 Your methodology was, by your own reckoning,</p> <p>23 supposed to weed out, exclude, those individuals who,</p> <p>24 quote, made a specific request that the text cease. Is</p>
<p style="text-align: right;">Page 39</p> <p>1 would have been performing an independent analysis.</p> <p>2 Q. I guess because you are the expert.</p> <p>3 As I understand what you are telling me, I think</p> <p>4 counsel said, Hey, these numbers don't -- these look</p> <p>5 expressions of interest, so you should remove them from</p> <p>6 the class list.</p> <p>7 Is that part accurate?</p> <p>8 A. Yes.</p> <p>9 Q. You did, in fact, remove them from the class</p> <p>10 list?</p> <p>11 A. Correct.</p> <p>12 Q. Between receiving the instruction from counsel</p> <p>13 and between actually removing them from the class list,</p> <p>14 did you or your team perform any analysis?</p> <p>15 A. No.</p> <p>16 Q. You mentioned that Mr. Kostyun had identified, I</p> <p>17 believe, you number was 28 examples of responses from</p> <p>18 consumers that appear to be indications of interest, not</p> <p>19 a request that the telemarketing cease. Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Have you done any analysis to see how prevalent</p> <p>22 that issue is among the individuals that are listed on</p> <p>23 your class list?</p> <p>24 A. I have not, because as I stated earlier, it is my</p>	<p style="text-align: right;">Page 41</p> <p>1 that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Mr. Kostyun identified at least 28 specific</p> <p>4 examples of people who are on your class list, which</p> <p>5 both you and I agree it does not look like they made a</p> <p>6 specific request that the text cease; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Do you have any idea how many others are out</p> <p>9 there, who if you looked at their text it would also</p> <p>10 reflect that they did not ask that the telemarketing</p> <p>11 cease?</p> <p>12 A. It is my understanding, based on paragraph 59,</p> <p>13 that class counsel instructed me to remove all those</p> <p>14 texts and telephone numbers.</p> <p>15 Q. It is your understanding, maybe the original list</p> <p>16 included some people who actually expressed interest not</p> <p>17 that the calls stop, but once you got to your final list</p> <p>18 with the help of counsel, that final list is of all</p> <p>19 people who made requests that the text stop; is that</p> <p>20 accurate?</p> <p>21 A. That's correct.</p> <p>22 Q. We agree that the 28 examples, which were from</p> <p>23 the original list that Mr. Kostyun provided, are</p> <p>24 examples in which the consumer did not make a request</p>

<p style="text-align: right;">Page 42</p> <p>1 that the telemarketing cease; correct?</p> <p>2 A. Can I will review it one more time?</p> <p>3 Q. Sure.</p> <p>4 A. Correct.</p> <p>5 Q. Okay. So it's your understanding that class</p> <p>6 counsel has now identified all the numbers that needed</p> <p>7 to be weeded out that were expressions of interest so</p> <p>8 that your final list, corrected Exhibit 2, now only</p> <p>9 includes people who actually express interest. Is that</p> <p>10 your testimony?</p> <p>11 I'm sorry. I said that completely backwards, and</p> <p>12 I understand why you are confused. Let me try that</p> <p>13 again.</p> <p>14 Is it your understanding that the final class</p> <p>15 list, which by that I mean, I think you call it corrected</p> <p>16 Exhibit 2, that was attached to your supplemental report</p> <p>17 that that list now, with the help of counsel, has</p> <p>18 excluded all individuals who expressed interest rather</p> <p>19 than request that the calls stop?</p> <p>20 A. Correct.</p> <p>21 MR. SITTER: Now, we are going to test my</p> <p>22 technological skills. Let's go off the record.</p> <p>23 (Break in the proceedings.)</p> <p>24 MR. SITTER: We are back from a break for</p>	<p style="text-align: right;">Page 44</p> <p>1 my screen, I'm happy to share it with you later.</p> <p>2 MR. PARONICH: I just want the witness to be</p> <p>3 able to have it, the whole document, in front of her.</p> <p>4 MR. SITTER: It is a two-page document. It</p> <p>5 is actually just a sample from Mr. Kostyun's report.</p> <p>6 MR. PARONICH: Anya, you have Mr. Kostyun's</p> <p>7 report in front you of you, and we can identify the</p> <p>8 document, that's fine with me as long as she is able to</p> <p>9 access the document.</p> <p>10 MR. SITTER: Okay.</p> <p>11 BY MR. SITTER:</p> <p>12 Q. Do you see this document? Can everybody see it?</p> <p>13 Ms. Verkhovskaya, can you see it?</p> <p>14 A. Yes.</p> <p>15 Q. I will -- you can see as I scroll through here</p> <p>16 there are some page numbers 18 and 19. This is an</p> <p>17 excerpt of pages 18 and 19 from Mr. Kostyun's report.</p> <p>18 What we have done here, I will represent to you,</p> <p>19 is highlight phone numbers in his report that he</p> <p>20 identified as not being a request that the text cease.</p> <p>21 These are the examples that we were talking about</p> <p>22 before. What we have done is just highlight the ones</p> <p>23 that are still in your final class list.</p> <p>24 So we do agree that these numbers should not be</p>
<p style="text-align: right;">Page 43</p> <p>1 counsel's hearing and now we are going to get back into</p> <p>2 it.</p> <p>3 BY MR. SITTER:</p> <p>4 Q. When we left off, we were discussing consumers who</p> <p>5 were on your class list, but Mr. Kostyun had identified</p> <p>6 as actually expressing interest in receiving text not</p> <p>7 requesting that the text stop. Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. You looked at the 28 examples in his report, and</p> <p>10 we agreed that those are examples of instances in which</p> <p>11 those particular consumers expressed interest, not a</p> <p>12 request that the texts stop; correct?</p> <p>13 A. We agreed that those texts did not express</p> <p>14 requests to cease texting.</p> <p>15 Q. I believe it is your testimony, correct me if I'm</p> <p>16 wrong, that that issue has now been addressed and</p> <p>17 corrected in your final class list that now does exclude</p> <p>18 all the folks who did not actually request that the text</p> <p>19 cease. Do I have that right?</p> <p>20 A. Yes.</p> <p>21 MR. SITTER: I'm going to try to bring up an</p> <p>22 exhibit. I believe it is copied into chat. Does that</p> <p>23 work?</p> <p>24 Do you have an objection if I bring it up on</p>	<p style="text-align: right;">Page 45</p> <p>1 on your final class list; correct?</p> <p>2 A. I believe that interpretation of the language was</p> <p>3 done by counsel as a legal issue, and it's outside of</p> <p>4 the scope of my opinion whether it should be on the</p> <p>5 class list or not.</p> <p>6 Q. So you have no opinion one way or the other</p> <p>7 whether these highlighted numbers on this document</p> <p>8 should be included in the class list?</p> <p>9 A. I haven't verified if they are on the final class</p> <p>10 list or not. I rely on your presentation and I do not</p> <p>11 have an opinion if these texts represent being interpreted</p> <p>12 as interest or not.</p> <p>13 Q. Let's be clear about what your methodology was</p> <p>14 supposed to identify and what I'm asking here.</p> <p>15 I'm simply quoting back your own opinion to you,</p> <p>16 which said that you had a reliable methodology to identify,</p> <p>17 quote, Consumers who in response to their receipt of</p> <p>18 QuoteWizard text messages, made a specific request that</p> <p>19 the texts cease.</p> <p>20 My question is: Do you have an opinion one way</p> <p>21 or the other about whether these folks made a specific</p> <p>22 request that the texts cease?</p> <p>23 A. I believe that my methodology identifies individuals</p> <p>24 who made this specific request and if the Court</p>

<p style="text-align: right;">Page 46</p> <p>1 interprets these few telephone numbers that otherwise my 2 methodology would exclude them, so the methodology is 3 correct. And as I stated, interpretation of the legal 4 implication of this text's language is outside of the 5 scope of my expertise.</p> <p>6 Q. Okay. Let's break that down.</p> <p>7 Are you saying that you would rely on the Court 8 to evaluate whether particular language qualifies as a 9 specific request that the texts cease?</p> <p>10 A. It can be done in either meet and confer and 11 stipulated by the parties or the Court can rule it.</p> <p>12 All I'm saying is that a legal interpretation of 13 the language is not in the area of my expertise.</p> <p>14 Q. Finish, I'm sorry.</p> <p>15 A. I can only look at the data and see what 16 QuoteWizard decided to be on Do Not Call List, which I 17 did. Then I followed directions of counsel to exclude 18 what counsel considered texts and telephone numbers that 19 should be removed. I have not had a chance to verify 20 that these number are still part of the final class list.</p> <p>21 Q. You were relying, at this step of your methodology, 22 on counsel to tell you which numbers involved consumers 23 who made a specific request that the text cease and 24 which ones did not?</p>	<p style="text-align: right;">Page 48</p> <p>1 examples from the original class list in which we agree 2 those people were not asking that the text cease; 3 correct?</p> <p>4 A. Seemingly. But I also stated and testified earlier 5 that it is outside of the scope of my expertise to interpret 6 the text data.</p> <p>7 Q. Well, it may be outside the scope of your 8 expertise, but it doesn't appear to be outside of the 9 scope of the expert opinions that you are offering in 10 this case.</p> <p>11 I'm reading back to you the opinions that you 12 yourself authored and signed several times what state 13 that you can identify, again, the consumers who in 14 response to their receipt of QuoteWizard text messages 15 made a specific request that the text cease.</p> <p>16 Are you stating that you do not have the 17 expertise to make that determination?</p> <p>18 A. I do have the expertise. So look at -- that's 19 what I did, I looked at Do Not Call List, internal Do 20 Not Call List, and also removed all the texts identified 21 by counsel as such and that methodology works regardless 22 whether there is a dispute about several texts.</p> <p>23 Q. What methodology did counsel employ to identify 24 those individuals who made a specific request that the</p>
<p style="text-align: right;">Page 47</p> <p>1 A. That's correct.</p> <p>2 Q. And your team, apart from receiving those 3 instructions from counsel, did not do any independent 4 evaluation or analysis to determine whether those 5 consumers made a specific request that the text cease. 6 Is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Would you agree with me that it appears that 9 there's at least some degree of error in your class list 10 regarding the identification of people who made a specific 11 request that the text cease?</p> <p>12 MR. PARONICH: Objection.</p> <p>13 You can answer.</p> <p>14 A. I would not consider it an error. I would consider 15 it a point of disagreement that does not change my 16 methodology or my opinion and something that can easily 17 be resolved without changing the methodology.</p> <p>18 Q. Okay. So it is your opinion, even sitting here 19 today, after all of the reports, that your methodology 20 still reliably can identify consumers who in response to 21 their receipt of QuoteWizard text messages, made a 22 specific request that the text cease?</p> <p>23 A. That's correct.</p> <p>24 Q. But you do also agree that we have looked at 28</p>	<p style="text-align: right;">Page 49</p> <p>1 texts cease?</p> <p>2 A. You would have to ask counsel.</p> <p>3 Q. You do not know; correct?</p> <p>4 A. I do not.</p> <p>5 Q. Did your team perform any testing on -- well, I 6 guess you didn't, because you didn't know their 7 methodology. Scratch that.</p> <p>8 Okay. Mr. Kostyun identified another issue at 9 this step of your analysis, which was that -- this is in 10 your original report, I'm talking about your original 11 report -- that almost 14,000 of the numbers on your 12 original class list did not actually appear anywhere in 13 the Do Not Call records that you cited in your original 14 report; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Now, in your rebuttal report, you did not alter 17 the materials that you had reviewed regarding the issue 18 of people who appeared on Do Not Call files; is that 19 accurate?</p> <p>20 A. Yes.</p> <p>21 Q. In your supplemental report, you then did amend 22 that list of files that you had relied on; is that 23 accurate?</p> <p>24 A. That's correct.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. Specifically, you amended it to include two 2 additional files Drips 05 and Drips 08; is that correct? 3 A. That's correct. 4 Q. Now that have added those additional files to 5 your list of reviewed materials, are you aware one way 6 or the other, of whether all of the numbers on your 7 class list also appear in at least one of the Do Not 8 Call files. 9 A. All but one. 10 Q. All but one of the telephone numbers on your 11 final class list appears somewhere in the Do Not Call 12 files produced in discovery in this case; correct? 13 A. Correct. 14 Q. The one telephone number that does not appear in 15 those Do Not Call files, is whose number? 16 A. Mr. Mantha. 17 Q. The plaintiff in this case? 18 A. That's correct. 19 Q. So every single person on your class list appears 20 somewhere in the Do Not Call files except for the named 21 plaintiff in this class action; is that correct? 22 A. That's correct. 23 Q. I'm going to say something, with which you are 24 free to agree or disagree.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. It was my error. 2 Q. Okay. Let's talk about how you addressed that 3 error. Do you have your supplemental report in front of 4 you? 5 A. Yes. 6 Q. Okay. In your supplemental report you write, (as 7 read) On or about December 5th, 2023, as I prepared for 8 my deposition in this case, it was discovered that there 9 are two corrections. Paragraph 40.E of my expert report 10 should have listed two additional files that I did 11 review and rely on. Drips, I'm going to call it 5 for 12 short, and Drips 8. This had no affect on the opinions 13 expressed in my expert report. Is that accurate? 14 A. Yes. 15 Q. Okay. So we do agree that on this point there 16 were errors in your original report; correct? 17 A. Yes. 18 Q. And those errors were still present in your 19 rebuttal report; correct? 20 A. Yes. 21 Q. And then later, a few weeks later, you submitted 22 yet another report in which you added those two files to 23 the list of materials that you relied on; correct? 24 A. Not correct.</p>
<p style="text-align: right;">Page 51</p> <p>1 It appears to me that by identifying, at least on 2 your original class list according to your methodology 3 as originally stated, the fact that Mr. Kostyun identified 4 20 percent of your original class lists, who are not 5 actually reflected in the dataset you claim to rely on, 6 to me that indicates an error rate, at least in that 7 original analysis, of 20 percent. 8 Do you agree with that statement or do you not 9 agree with that statement? 10 MR. PARONICH: Objection. 11 You can answer. 12 A. I do not agree with the statement. 13 Q. Can you explain to me why? 14 A. The data work was performed correctly. I omitted 15 these two files in my original expert report and that 16 was the only error. So the data was absolutely correct, 17 there was no error in the data. 18 Q. Okay. But there was an error of some kind, maybe 19 not in the data? 20 A. As I just stated, I omitted listing these two 21 files out of hundreds of files I listed on the report. 22 Q. That omission was an error; correct? 23 A. Yes. 24 Q. This was your error or was it your team's error?</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Correct me, please. 2 A. It is not -- I didn't submit another report. I 3 submitted an amendment and correction in the report. 4 There were no new opinions expressed. And the data used 5 both in the Drips 5 and Drips 8 and the keywords list 6 were both discussed in my reports; therefore, it was an 7 obvious and transparent error that was more of a typo. 8 Q. So it was an obvious and transparent error; 9 correct? 10 A. Correct. 11 Q. But one that neither you nor your team caught 12 before your first report went out; correct? 13 A. That's correct. 14 Q. Also one an obvious error that neither you nor 15 your team caught before you submitted your rebuttal 16 report either; correct? 17 A. Correct. 18 Q. Are you aware of any other obvious errors that 19 have yet to be addressed in connection with your opinions? 20 A. I'm not. 21 Q. So we discussed the error regarding the omission 22 of certain files that you had in fact reviewed, but were 23 not listed in your original report. Were there any 24 other errors that you addressed in your supplemental</p>

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<p>1 report?</p> <p>2 A. The number of records after removal of business</p> <p>3 keywords accidentally included records with business</p> <p>4 keywords.</p> <p>5 Q. Okay. So now we've identified two errors that</p> <p>6 you discuss in your supplemental report, are there any</p> <p>7 others?</p> <p>8 A. No.</p> <p>9 Q. In your report you write, (as read) On or about</p> <p>10 December 5th, 2023, as I prepared for my deposition in</p> <p>11 this case, it was discovered that there are two</p> <p>12 corrections. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. When you say, "it was discovered that there were</p> <p>15 corrections," who discovered these errors that needed</p> <p>16 correcting?</p> <p>17 A. I did.</p> <p>18 Q. Personally?</p> <p>19 A. Yes.</p> <p>20 Q. Not a member of your team? Not counsel?</p> <p>21 A. It was then verified by several members of my</p> <p>22 team.</p> <p>23 Q. Okay. Several members of your team verified it.</p> <p>24 Who spotted it in the first place?</p>	<p>1 expressed in your original report was that you relied on</p> <p>2 the files listed in your original report to, among other</p> <p>3 things, limit your list of customers who responded to</p> <p>4 texts with a request that the telemarketing cease.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. But these files, Drips 5 and Drips 8, we can</p> <p>8 agree are not listed in your original report; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Does Drips 5 contain Do Not Call records?</p> <p>11 A. Yes.</p> <p>12 Q. Does Drips 8 contain Do Not Call records?</p> <p>13 A. Yes.</p> <p>14 Q. And you're sure of that?</p> <p>15 A. That's the information I had when I was</p> <p>16 performing my analysis.</p> <p>17 Q. Okay. I guess I'm a little confused and I invite</p> <p>18 you to explain however you see best.</p> <p>19 But you have a statement in your last report that</p> <p>20 says your opinions have not changed. But at least in</p> <p>21 terms of the materials relied on that were expressed in</p> <p>22 your original report, those are different now; correct?</p> <p>23 A. Incorrect.</p> <p>24 Q. That Drips 5 and Drips 8 are listed in your</p>
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<p>1 A. I did.</p> <p>2 Q. How did you spot it?</p> <p>3 A. By looking at the data.</p> <p>4 Q. These files? I'm sorry, "by looking at the data"</p> <p>5 what data are you talking about?</p> <p>6 A. By looking -- reviewing all of the data and all</p> <p>7 of the processes and procedures and all of the reports</p> <p>8 as I was preparing for the deposition.</p> <p>9 Q. Was this when you were preparing for the</p> <p>10 deposition with counsel or preparing by yourself?</p> <p>11 A. By myself.</p> <p>12 Q. Now, when we were going over the roles of</p> <p>13 different members of your team performing in connection</p> <p>14 with your work on this case, I believe you said for two</p> <p>15 or three of them that part of their responsibility</p> <p>16 included, was it, quality assurance?</p> <p>17 A. That's correct.</p> <p>18 Q. And yet none of those members of your team caught</p> <p>19 either of these errors; correct?</p> <p>20 A. Correct.</p> <p>21 Q. All right. You also write at the end of that</p> <p>22 paragraph that, (as read) This had no effect on the</p> <p>23 opinions expressed in my report.</p> <p>24 I want to unpack that a little bit. The opinion</p>	<p>1 original report?</p> <p>2 A. They are listed in the data that was -- included</p> <p>3 in the data that was analyzed. And Mr. Kostyun could</p> <p>4 clearly see that from the data analysis that he performed.</p> <p>5 So I think that a typo -- it is my opinion that a typo</p> <p>6 in the list of files, does not represent any change in</p> <p>7 my opinions.</p> <p>8 Q. Okay. Your initial report stated that there was</p> <p>9 a specific number of class members; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And a specific number of texts associated with</p> <p>12 those telephone numbers; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Your rebuttal report said that there was a</p> <p>15 different number of class members; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And a different number of texts at issue,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Then your supplemental corrected report states</p> <p>21 that there is yet a third number of class members;</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And a third number of texts at issue; correct?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. Correct.</p> <p>2 Q. Is it still your testimony that your opinions 3 have not changed between your original report and your 4 rebuttal or your supplemental report?</p> <p>5 A. Yes.</p> <p>6 Q. Even though the number of class members, the 7 number of texts have changed over that period of time; 8 correct?</p> <p>9 A. Correct. Because it did not affect my 10 methodology or my opinions.</p> <p>11 Q. Between your original report and your rebuttal 12 report, you did remove certain telephone numbers at the 13 direction of counsel; correct?</p> <p>14 A. Correct.</p> <p>15 Q. You don't believe that is a change of the expert 16 opinions that you are offering in this case?</p> <p>17 A. Correct.</p> <p>18 Q. Another point that Mr. Kostyun makes on this 19 issue is that there is a lot of missing data regarding 20 the content of certain text messages that, per your 21 analysis -- well let me back that up. Scratch that.</p> <p>22 Mr. Kostyun identified another issue, which was 23 that a large percentage of the folks on your class list, 24 there is no available data regarding the content of the</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. Two things seem at odds to me. My 2 question is regarding whether you can make them make 3 sense. One is your statement in your report that you 4 have a methodology for identifying those people who made 5 a specific request that the text cease. And then the 6 others that we just talked about how some large 7 percentage of -- for some large percentage of the folks 8 on your list, we actually don't have any of the texts 9 that they communicated to QuoteWizard.</p> <p>10 How do you deal with that apparent contradiction?</p> <p>11 A. I do not see it as a contradiction.</p> <p>12 Q. Is this because, as we were talking about before, 13 you don't believe that you are actually offering an 14 opinion about whether someone made a specific request 15 that the texts cease?</p> <p>16 MR. PARONICH: Objection to form.</p> <p>17 You can answer.</p> <p>18 A. I think that if additional data was provided by 19 the defendant about the text messages relevant to the 20 those records where it is currently missing, my 21 methodology would still apply.</p> <p>22 And, additionally, I believe that if those text 23 messages are missing, it is a legal issue, which is 24 outside of the scope of my opinion. My data analysis</p>
<p style="text-align: right;">Page 59</p> <p>1 text messages that they sent to QuoteWizard. Did you 2 review that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you agree with that statement that for a large 5 percentage of the folks on your class list, there is no 6 available data that you reviewed with the content of 7 their responses to QuoteWizard?</p> <p>8 A. There was no available data to me, I agree with 9 that.</p> <p>10 Q. And Mr. Kostyun quotes a round figure of around 11 30,000 or about 42 percent of the class for which this 12 is the case; do you have any reason to dispute that 13 figure?</p> <p>14 A. Yes.</p> <p>15 Q. Why?</p> <p>16 A. I don't believe Mr. Kostyun included Drips 5 and 17 Drips 8 in his analysis.</p> <p>18 Q. If those were included, do you have an opinion 19 regarding -- let me put it this way: Sitting here today, 20 with all of the data that you've reviewed and the reports 21 that you've prepared, do you know what percentage of the 22 folks on your class list, we do not have the content of 23 their text message responses to QuoteWizard?</p> <p>24 A. I do not.</p>	<p style="text-align: right;">Page 61</p> <p>1 was focused on what was available to me at the time, 2 which is a list internal Do Not Call list. And I relied 3 on that representation by both the defendant and 4 plaintiffs' counsel that the list was comprised by 5 mostly those individuals who requested that the messages 6 cease.</p> <p>7 Q. That was an assumption that was built into your 8 analysis that the list that you used were people who had 9 requested that the text or calls cease?</p> <p>10 A. That is based on my experience of expertise working 11 on hundreds of cases where I dealt with internal Do Not 12 Call lists, that's how companies put telephone numbers 13 on the Do Not Call lists. And usually when the telephone 14 numbers are placed on internal Do Not Call lists, the 15 telemarketing to these telephone numbers cease.</p> <p>16 Q. Your methodology says that you can identify those 17 people whom made a specific request that the text cease. 18 Let's break that apart.</p> <p>19 Is the determination of whether the consumer made 20 a specific request that the texts cease, is that a legal 21 issue in your mind or a factual issue that you are 22 prepared to address?</p> <p>23 A. It is a combination. I can only do what the data 24 shows me and the rest is the legal issue.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. That's not stated in your report, is it?</p> <p>2 A. It is.</p> <p>3 Q. Where?</p> <p>4 A. I remember stating somewhere --</p> <p>5 (Technical difficulties.)</p> <p>6 MR. SITTER: I'm going to say for the record --</p> <p>7 Anthony, correct me if you disagree with anything -- we</p> <p>8 had a brief break there while the stenographer was</p> <p>9 disconnected. She is back on. The witness has been</p> <p>10 reviewing a document. And we are picking up our</p> <p>11 questioning there.</p> <p>12 Q. Ms. Verkhovskaya, go ahead give us your answer,</p> <p>13 please?</p> <p>14 MR. PARONICH: Agreed.</p> <p>15 Go ahead.</p> <p>16 A. I remember stating somewhere that consent is a</p> <p>17 legal issue and neither myself nor Mr. Kostyun is really</p> <p>18 qualified -- are really qualified to opine on consent</p> <p>19 issues. But I can't seem to locate this language at</p> <p>20 this time.</p> <p>21 Q. I don't take much issue with that concept. What</p> <p>22 I'm really trying to address, Ms. Verkhovskaya, is not a</p> <p>23 legal issue. It is the opinion that's stated in your</p> <p>24 report. Or if you think it is a legal issue, then I</p>	<p style="text-align: right;">Page 64</p> <p>1 texts. That is how usually internal Do Not Call lists</p> <p>2 are compiled.</p> <p>3 The data was provided to me and in the</p> <p>4 interrogatories, the fourth set of interrogatories that</p> <p>5 I relied on, clearly identify internal Do Not Call</p> <p>6 files. And the data that I worked with fits my</p> <p>7 methodology of excluding telephone numbers that were on</p> <p>8 internal Do Not Call lists. And I stand by that</p> <p>9 methodology.</p> <p>10 Q. Okay. I think what you are telling me that what</p> <p>11 you really did here is you identified the phone numbers</p> <p>12 from the prior step that also appeared on one of the Do</p> <p>13 Not Call files that was produced in this case. Is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. So that analysis assumes that if a consumer's</p> <p>17 phone number appears on one of the Do Not Call files</p> <p>18 that is what you mean when you say that consumer, quote,</p> <p>19 made a specific request that the texts cease?</p> <p>20 A. That's correct.</p> <p>21 Q. There is no actual analysis by your team of the</p> <p>22 content of these texts; correct?</p> <p>23 A. That's correct.</p> <p>24 Q. You are simply saying, Hey, this was on one of</p>
<p style="text-align: right;">Page 63</p> <p>1 need you to tell me that, so I can stop continuing to</p> <p>2 ask you questions about it.</p> <p>3 The reason I'm asking questions is because these</p> <p>4 are the words that are actually in your stated opinion</p> <p>5 and I'm trying to understand the basis for them. I have</p> <p>6 read it several times now regarding your statement that</p> <p>7 you have a reliable methodology for identifying folks</p> <p>8 who made a specific request that the telemarketing</p> <p>9 cease.</p> <p>10 Are you telling me those words in your report are</p> <p>11 reflecting a legal opinion on which you are not qualified to</p> <p>12 opine?</p> <p>13 A. No.</p> <p>14 Q. Then I'm going to continue asking you questions</p> <p>15 about them, and you can speak with your attorney, but I</p> <p>16 think we will move a lot faster if you stop telling me</p> <p>17 it is a legal issue. I'm not asking about TPCA consent.</p> <p>18 I'm simply asking about the basis for the stated words</p> <p>19 in your original report. Okay?</p> <p>20 A. As I testified earlier, and I'm going to testify</p> <p>21 again, that the data that I relied on was internal Do</p> <p>22 Not Call list. It is my understanding that in order to</p> <p>23 appear on internal Do Not Call lists, you have to send a</p> <p>24 request to the defendant in this case to cease further</p>	<p style="text-align: right;">Page 65</p> <p>1 the Do Not Call files, so I'm assuming that means that</p> <p>2 the person made a request at the text cease; correct?</p> <p>3 A. Correct.</p> <p>4 Q. But as we discussed before, it is entirely</p> <p>5 possibly that people got what they wanted from</p> <p>6 QuoteWizard after happily texting with them and only</p> <p>7 made a request that the text cease after they had gotten</p> <p>8 everything they wanted. Correct?</p> <p>9 A. It is possible and I did not have an opinion on</p> <p>10 legal implication of that scenario.</p> <p>11 Q. I don't want your opinion on the legal implications.</p> <p>12 I do want you to tell me factually whether you</p> <p>13 agree with that as a possibility or not. I think you</p> <p>14 have done that.</p> <p>15 As a standing issue, Ms. Verkhovskaya, I'm not</p> <p>16 interested in obtaining legal opinions from you. So if</p> <p>17 you think that's what I'm asking for in a question, let</p> <p>18 me know and I will try to rephrase it correctly.</p> <p>19 A. Thank you.</p> <p>20 MR. SITTER: I think this is a good place to</p> <p>21 break. Let's go off the record.</p> <p>22 (Lunch break in the proceedings.)</p> <p>23 BY MR. SITTER:</p> <p>24 Q. So we just took a short break for lunch. When we</p>

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<p>1 collating and comparing. Is that fair?</p> <p>2 A. Yes.</p> <p>3 Q. One of those outputs is the NDNCR output from</p> <p>4 PacificEast, correct?</p> <p>5 A. Correct.</p> <p>6 Q. One of those is the output from PacificEast</p> <p>7 regarding business telephone numbers; correct?</p> <p>8 A. Correct.</p> <p>9 Q. One of them is your assumption that the Do Not</p> <p>10 Call files reflect a specific request by a consumer to</p> <p>11 stop receiving texts, too. Correct?</p> <p>12 A. At some point of my analysis, correct.</p> <p>13 Q. And you are assuming that the data reflecting</p> <p>14 landline telephone numbers, that it is accurate that</p> <p>15 texts can be delivered to those telephone numbers. Is</p> <p>16 that fair?</p> <p>17 A. It is fair. Especially when those telephone numbers</p> <p>18 reply with a text, which is part of consideration of my</p> <p>19 methodology.</p> <p>20 Q. You do employ that assumption, you are explaining</p> <p>21 why, that is the assumption upon which your methodology</p> <p>22 is based; correct?</p> <p>23 A. Correct.</p> <p>24 Q. If any one of those assumptions turns out to be</p>	<p>1 A. Not on top of my head.</p> <p>2 Q. Sitting here today, during this deposition, you</p> <p>3 are not prepared to tell me of any literature in the</p> <p>4 field of data analysis that supports your position; is</p> <p>5 that accurate?</p> <p>6 A. Yes, it is.</p> <p>7 Q. Do you have a contract with PacificEast for the</p> <p>8 provision of its services to your company?</p> <p>9 A. Yes.</p> <p>10 Q. In that contract, does PacificEast promise that</p> <p>11 its data outputs are one hundred percent accurate?</p> <p>12 A. It does not.</p> <p>13 Q. Doesn't it actually say something different?</p> <p>14 Isn't their language in your contract that in which</p> <p>15 PacificEast expressly disclaims any representations or</p> <p>16 warranties regarding the accuracy or completeness of its</p> <p>17 data?</p> <p>18 A. I don't recall if such disclaimer is on their</p> <p>19 website or in the contract.</p> <p>20 Q. You are familiar -- it is your understanding that</p> <p>21 is a disclaimer that applies to the data outputs that</p> <p>22 PacificEast provides; is that correct?</p> <p>23 A. Such a disclaimer exists somewhere, yes.</p> <p>24 Q. You understand that it is not PacificEast's</p>
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<p>1 incorrect or if any one of those datasets turns out to</p> <p>2 be full of errors, that would have a commensurate effect</p> <p>3 on the accuracy of the opinions that you offer in this</p> <p>4 case; correct?</p> <p>5 A. Incorrect.</p> <p>6 Q. I want to you give a chance to explain that in a</p> <p>7 minute. I do want to ask the question. Let's say</p> <p>8 PacificEast gives you a completely garbage output, it is</p> <p>9 just wrong, it is all wrong.</p> <p>10 Is it your testimony that that would not have</p> <p>11 impacted the opinions that you offered in this case?</p> <p>12 A. Correct.</p> <p>13 Q. Why not?</p> <p>14 A. Because my opinions are about my methodology and</p> <p>15 if one of the outputs have errors, it's not going to</p> <p>16 affect the methodology. The errors could easily be</p> <p>17 corrected, but the methodology will remain accurate.</p> <p>18 Q. It is your testimony that even if one or more of</p> <p>19 the data files that you used in your analysis was</p> <p>20 completely wrong that would not impact the reliability</p> <p>21 of the opinions that you offer in this case?</p> <p>22 A. Correct.</p> <p>23 Q. Are you aware of any literature in the field of</p> <p>24 data analysis that supports your position?</p>	<p>1 position that these data outputs are one hundred percent</p> <p>2 accurate; correct?</p> <p>3 A. Correct.</p> <p>4 Q. You do not actually have any information one way</p> <p>5 or the other regarding the degree of accuracy of these</p> <p>6 data outputs, do you?</p> <p>7 A. I do not.</p> <p>8 Q. If I wanted to test the accuracy of PacificEast's</p> <p>9 data outputs, are you aware of any way in which I could</p> <p>10 do that?</p> <p>11 A. I would hire a team of experts and put together a</p> <p>12 methodology of how to get it done.</p> <p>13 Q. Okay. If I wanted to check the accuracy of</p> <p>14 PacificEast's data outputs, I would need to hire a team</p> <p>15 of experts and come up with some process for doing that;</p> <p>16 is that your testimony?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Is it your understanding -- scratch that.</p> <p>19 Have you yourself hired a team of experts to</p> <p>20 check the accuracy of PacificEast's data outputs?</p> <p>21 A. No.</p> <p>22 Q. Have you ever requested from PacificEast that it</p> <p>23 provide a certification or warranty as to the accuracy</p> <p>24 of the data outputs that you used in this case?</p>

<p style="text-align: right;">Page 82</p> <p>1 A. No.</p> <p>2 Q. You're not aware of anyone who has actually</p> <p>3 tested those outputs beyond the five manual numbers that</p> <p>4 we discussed earlier in your testimony; is that accurate?</p> <p>5 A. That's accurate for this case.</p> <p>6 Q. If you discovered that PacificEast had tested its</p> <p>7 data and concluded that 20 percent of the outputs</p> <p>8 typically are erroneous, would that impact your opinions</p> <p>9 in this case at all?</p> <p>10 A. No.</p> <p>11 Q. What if it was 50 percent?</p> <p>12 A. In the hypothetical scenario that it is 50</p> <p>13 percent, I still believe that the methodology was some</p> <p>14 additional steps were valid.</p> <p>15 Q. What if it was a hundred percent?</p> <p>16 A. It is not possible but I still believe the</p> <p>17 methodology is correct whether we use this vendor or go</p> <p>18 directly to NDNCR, it is still correct methodology.</p> <p>19 Q. I want to be clear. It is your testimony that if</p> <p>20 you learned that the PacificEast data outputs from the</p> <p>21 NDNCR are one hundred percent erroneous, that would not</p> <p>22 impact your opinions in this case?</p> <p>23 MR. PARONICH: Objection. Mischaracterizes</p> <p>24 her testimony.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay. I may have asked the question a little bit</p> <p>2 a different way.</p> <p>3 So the registration dates are a data points that</p> <p>4 you relied on to provide the opinions that you offer in</p> <p>5 this case; correct?</p> <p>6 A. The data points I relied on for compiling a list</p> <p>7 of potential class members; that's correct.</p> <p>8 Q. You did not pull any of these registration dates</p> <p>9 from the NDNCR yourself, not you, not your team;</p> <p>10 correct?</p> <p>11 A. We verified a few as I mentioned.</p> <p>12 Q. So apart from the five or so that we mentioned</p> <p>13 before they didn't; correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you know how PacificEast goes about collecting</p> <p>16 the registration dates from the NDNCR and then putting</p> <p>17 them into your data output, what is "its methodology"?</p> <p>18 A. It takes the date from NDNCR and enters it on to</p> <p>19 our output and that's it.</p> <p>20 Q. It is your testimony that PacificEast goes directly</p> <p>21 to the FTC website, pulls the data on the FTC website,</p> <p>22 by that, I mean the NDNCR database, specifically, and</p> <p>23 then it puts that information into a data output and</p> <p>24 then it sends that data output to you. Is that</p>
<p style="text-align: right;">Page 83</p> <p>1 You can answer.</p> <p>2 MR. SITTER: That's why it is a question.</p> <p>3 MR. PARONICH: It's a leading one, so it is</p> <p>4 an objection as to form as well.</p> <p>5 A. We would, as I stated, just find a different</p> <p>6 vendor, but the methodology still stands.</p> <p>7 Q. The truth is you don't know if it is 1 percent,</p> <p>8 10 percent, 50 percent, hundred percent error rate in</p> <p>9 the PacificEast data outputs that you used in this case,</p> <p>10 because you did not verify it yourself; correct?</p> <p>11 A. Not in this case.</p> <p>12 Q. So that is correct?</p> <p>13 A. That is correct.</p> <p>14 Q. One of the data points that PacificEast provided</p> <p>15 in its output to you was the date that a particular</p> <p>16 number was registered on the NDNCR; is that accurate?</p> <p>17 A. Yes, it is.</p> <p>18 Q. These registration dates are central to your</p> <p>19 opinions; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Your opinions rely on the accuracy of these</p> <p>22 registration dates; correct?</p> <p>23 A. My opinions rely on my methodology of those dates</p> <p>24 is the focal point of the application of my methodology.</p>	<p style="text-align: right;">Page 85</p> <p>1 accurate?</p> <p>2 A. Whether -- it is my understanding whether</p> <p>3 directly or through some other channels, that is what</p> <p>4 they do, yes.</p> <p>5 Q. You don't know any of the specifics about how</p> <p>6 they go about getting the information from the NDNCR</p> <p>7 database; is that accurate?</p> <p>8 A. Yes, it is.</p> <p>9 Q. So to be clear, because you don't have that</p> <p>10 knowledge, is it fair to say you are not -- also not</p> <p>11 expressing an opinion in this case regarding the steps</p> <p>12 that PacificEast took to obtain those registration dates?</p> <p>13 A. That's correct.</p> <p>14 Q. To the extent that PacificEast used a vendor of</p> <p>15 its own to perform the registration lookups on the NDNCR</p> <p>16 database, you are not offering any opinions about the</p> <p>17 steps that that vendor might have taken either, are you?</p> <p>18 A. That's correct.</p> <p>19 Q. And that's because you would have no idea what</p> <p>20 that vendor had done, if there is one, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. So in his rebuttal report Mr. Kostyun</p> <p>23 notes that he located approximately 3,500 -- 3,455</p> <p>24 telephone numbers with invalid registration dates,</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 90</p> <p>1 (Break in the proceedings.)</p> <p>2 BY MR. SITTER:</p> <p>3 Q. We are back from a short break.</p> <p>4 Ms. Verkhovskaya, your third opinion, which has</p> <p>5 to do with the ability to exclude individuals who</p> <p>6 express interest in receiving the text. Okay.</p> <p>7 Specifically the opinion that you offered was (as</p> <p>8 read) using the data produced in discovery by</p> <p>9 QuoteWizard, Drips, Bandwidth, and Twilio, there is a</p> <p>10 reliable and efficient method to remove from the</p> <p>11 proposed class, the telephone numbers of consumers who</p> <p>12 responded to the QuoteWizard text with an expression of</p> <p>13 interest and for whom QuoteWizard paid Drips for the</p> <p>14 lead.</p> <p>15 So as I understand your methodology at this step,</p> <p>16 and I invite you to correct me if I'm wrong, you took</p> <p>17 the potential customer file and just cross referenced</p> <p>18 that from your list. And if someone was on the</p> <p>19 potential customer file, then you took them off of your</p> <p>20 list. Is that accurate?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Beyond that, is it fair to say you did not do any</p> <p>23 additional analysis at this step?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Okay. Is it fair to say that at this step of the</p> <p>2 analysis, you are relying on the accuracy of</p> <p>3 QuoteWizard's records regarding whether a particular</p> <p>4 consumer was a potential customer; is that accurate?</p> <p>5 A. That's correct.</p> <p>6 Q. You did not do any sort of independent analysis</p> <p>7 on that point; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. We talked a minute ago about some of the</p> <p>10 examples that Mr. Kostyun identified from your class</p> <p>11 list of individuals who appeared to express interest in</p> <p>12 receiving calls. Do you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. But you would agree that your methodology</p> <p>15 at this step did not exclude those individuals from your</p> <p>16 class list?</p> <p>17 A. Unless they were on the customer list as well.</p> <p>18 Q. Right. But the examples that Mr. Kostyun</p> <p>19 identified were all from your class list. So those</p> <p>20 individuals are all still on your class list. Is that</p> <p>21 accurate?</p> <p>22 A. I have not checked that information, so I don't</p> <p>23 know.</p> <p>24 Q. You are not sure, sitting here today, whether the</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Who perform the actual cross reference between</p> <p>2 the potential customer files and the list that you had</p> <p>3 up until that step in your analysis?</p> <p>4 A. Irina.</p> <p>5 Q. Your sister?</p> <p>6 A. That's correct.</p> <p>7 Q. What specifically did she do?</p> <p>8 A. She wrote a sequel code that compared two</p> <p>9 different sets of data and removed from further analysis</p> <p>10 all records that appeared on the customer file.</p> <p>11 Q. Okay. Is it accurate that it was your counsel</p> <p>12 who instructed you to remove the individuals from your</p> <p>13 class list who also appeared on the potential customer</p> <p>14 file?</p> <p>15 A. That's correct.</p> <p>16 Q. You performed this step at the direction of your</p> <p>17 counsel, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. The scope of what was performed was a cross</p> <p>20 reference that removed folks who appeared on one of</p> <p>21 these files; is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. That is what your sister did here; correct?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 93</p> <p>1 folks who are in the 28 examples that we looked at in</p> <p>2 the highlighted subset of those, are still on your class</p> <p>3 list; is that your testimony?</p> <p>4 A. That's correct.</p> <p>5 Q. Assuming that those individuals are still on your</p> <p>6 class list, does that raise any concerns for you regarding</p> <p>7 the reliability or accuracy of the methodology that you</p> <p>8 performed in connection with this case?</p> <p>9 A. No.</p> <p>10 Q. So the presence of individuals whose text</p> <p>11 messages indicate that they expressed interest in</p> <p>12 receiving text from QuoteWizard on your class list, does</p> <p>13 not cause you to have any concerns regarding the</p> <p>14 accuracy or reliability of your opinions in this case?</p> <p>15 A. Not about reliability of opinions. If there are</p> <p>16 records that are in dispute, those records could easily</p> <p>17 be removed, but the same methodology and the same</p> <p>18 opinions are going to be applicable.</p> <p>19 Q. Including the number of class members?</p> <p>20 A. The propose methodology and my opinions are</p> <p>21 different from the execution of the methodology. So if</p> <p>22 class counsel will meet with defendant and meet and</p> <p>23 confer and agree and stipulate on removing certain other</p> <p>24 records, my methodology and my opinions are not going to</p>

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<p>1 change.</p> <p>2 The execution could be different based on that or</p> <p>3 a Court orders or any other changes. Additional data</p> <p>4 could be provided. And as I state in both reports, I</p> <p>5 have a right to amend the numbers should more information</p> <p>6 or additional information become available.</p> <p>7 Q. But you are not a lawyer, right?</p> <p>8 A. That's correct.</p> <p>9 Q. When you say you have the right to do that, I</p> <p>10 understand that you put some words in your report that</p> <p>11 say you reserve the right, but you are not saying that</p> <p>12 you actually have the legal right to do that, are you?</p> <p>13 A. I am saying that as an expert if more data is</p> <p>14 available to me, I can append or amend the execution of</p> <p>15 my methodology; that's all.</p> <p>16 Q. Is that what you foresee doing in this case? Are</p> <p>17 you planning to further amend or change your methodology</p> <p>18 after this deposition?</p> <p>19 MR. PARONICH: Objection.</p> <p>20 You can answer?</p> <p>21 A. Not at this time. But it often happens that</p> <p>22 things change during litigation.</p> <p>23 Q. Okay. I want to break that down a little bit. I</p> <p>24 feel like you are drawing a distinction, if you are, I</p>	<p>Page 94</p> <p>1 You can answer.</p> <p>2 A. We have done the methodology based on the data</p> <p>3 available today. Should more data or additional information</p> <p>4 be provided, it is possible that the same methodology</p> <p>5 could be executed a little bit different. I am not</p> <p>6 aware of anything at this time, but as stated in my</p> <p>7 report, it can happen.</p> <p>8 Q. You are offering these various class lists and at</p> <p>9 this point corrected Exhibit 2, in your expert opinion,</p> <p>10 are the list of class members in this case. Is that</p> <p>11 correct?</p> <p>12 A. The list of potential class members in this case,</p> <p>13 that's correct.</p> <p>14 Q. You conducted your stated methodology in your</p> <p>15 reports to arrive at that class list, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. You are offering the expert opinion or you think</p> <p>18 it is at least implied that you perform that methodology</p> <p>19 in a reliable manner to arrive at the class list that</p> <p>20 you are offering in this case. Is that fair?</p> <p>21 A. Yes.</p> <p>22 Q. All right. I would like to move onto your</p> <p>23 opinion number 4. This has to do with the step to</p> <p>24 exclude unauthorized texts from the class list. Is that</p>
<p>1 would like to clarify it. If you are not, I would like</p> <p>2 to understand that.</p> <p>3 It seems to me like you are trying to draw a</p> <p>4 distinction between your opinion that a methodology -- a</p> <p>5 reliable methodology exists to do these things. And</p> <p>6 whether you and your team actually conducted that</p> <p>7 methodology in a reliable way to date in this case.</p> <p>8 Are you offering the first opinion? That there</p> <p>9 is a methodology -- a reliable methodology to identify</p> <p>10 people based on the available data that meet the</p> <p>11 criteria announced in your expert report?</p> <p>12 A. In both of my expert reports, that's correct.</p> <p>13 Q. Are you also offering the opinion that your team</p> <p>14 has actually conducted that methodology in a reliable</p> <p>15 manner in this case in coming up with the list that</p> <p>16 you've provided?</p> <p>17 A. It is not part of my official opinions in the</p> <p>18 report, but it is assumed that every expert tries to</p> <p>19 conduct the methodology in the most reliable possible</p> <p>20 way based on the data available at that time.</p> <p>21 Q. What I'm trying to understand, are you saying you</p> <p>22 have not yet done the methodology? Or are you saying</p> <p>23 that you have already done the methodology?</p> <p>24 MR. PARONICH: Objection.</p>	<p>Page 95</p> <p>1 fair?</p> <p>2 A. Yes.</p> <p>3 Q. At this step, you state that you were instructed</p> <p>4 -- by counsel, I take it?</p> <p>5 A. Yes.</p> <p>6 Q. You were instructed by counsel to remove from the</p> <p>7 proposed class all numbers listed on the, quote,</p> <p>8 authority files. Is that accurate?</p> <p>9 A. Correct.</p> <p>10 Q. Breaking this down, counsel says, Ms. Verkhovskaya,</p> <p>11 you should exclude all the numbers that are on the</p> <p>12 authority files. And then you exclude those numbers</p> <p>13 from your list.</p> <p>14 Are there additional steps at this stage of your</p> <p>15 methodology that I have left out?</p> <p>16 A. No.</p> <p>17 Q. Okay. Let's talk about opinion number 5. This</p> <p>18 has to do with the ability to exclude business numbers.</p> <p>19 And your opinion was, quote, (as read) Using the data</p> <p>20 produced in discovery, along with reliable commercially</p> <p>21 available databases, there is a reliable and efficient</p> <p>22 method by which it can be determined whether defendant</p> <p>23 and/or agents acting on its behalf texted business</p> <p>24 numbers, if any, for those telephone numbers to be</p>

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<p style="text-align: right;">Page 98</p> <p>1 removed from the proposed class.</p> <p>2 Is that the opinion that you are offering in this</p> <p>3 case?</p> <p>4 A. Yes.</p> <p>5 Q. You use the word "reliable" several times in</p> <p>6 here. You use it when referring to the commercially</p> <p>7 available database. You also use it with respect to the</p> <p>8 method of determining this information.</p> <p>9 When you say "reliable," can you quantify that</p> <p>10 for me at all?</p> <p>11 A. My standard that I use is the standard of more</p> <p>12 likely than not.</p> <p>13 Q. Okay. So you are saying that your methodology</p> <p>14 for any particular number on your list should indicate</p> <p>15 with at least -- with 50 percent or greater certainty</p> <p>16 that that person belongs on your list?</p> <p>17 A. No. I'm stating something that when I'm</p> <p>18 identifying a potential business telephone numbers at</p> <p>19 this stage I'm not claiming a hundred percent accuracy</p> <p>20 standard. I'm claiming that this is the best</p> <p>21 methodology that is available out there right now.</p> <p>22 To identify, more likely than not, together with a few</p> <p>23 other steps that I describe in my report, each telephone</p> <p>24 numbers, more likely than not, are business telephone</p>	<p style="text-align: right;">Page 100</p> <p>1 find it reliable.</p> <p>2 Q. When you use the word "reliable," throughout your</p> <p>3 report, are you trying to say that that means that there</p> <p>4 is somewhere between 80 or 90 percent certainty that</p> <p>5 thing is true?</p> <p>6 A. No.</p> <p>7 I'm saying that my experience over the period of</p> <p>8 years suggests that this is possible accuracy rates.</p> <p>9 But I have not personally tested this particular dataset.</p> <p>10 Q. So you don't know how accurate this dataset is</p> <p>11 that you are using in your opinions for this case;</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And I know you said that you thought that this</p> <p>15 data was reliable based on your own personal experience;</p> <p>16 is that accurate?</p> <p>17 A. My personal -- my professional experience, I</p> <p>18 would say. As well as experience of the companies that</p> <p>19 I worked for.</p> <p>20 Q. But this also comes from Ms. Verkhovskaya's</p> <p>21 personal, professional life, that you are asking us to</p> <p>22 accept as the basis for knowing that this data is</p> <p>23 reliable; is that fair?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 numbers.</p> <p>2 Q. Okay. So those are different. I want to break</p> <p>3 that down. One time you said "best". The report says</p> <p>4 "reliable." And those can be different. The best</p> <p>5 method may not be a reliable method.</p> <p>6 So I want to understand when you use the word</p> <p>7 "reliable" here, do you just mean best available or do</p> <p>8 you mean reliable in a quantifiable sense?</p> <p>9 A. Both.</p> <p>10 Q. Let's talk about the quantifiable sense. How do</p> <p>11 we quantify that?</p> <p>12 A. Based on my experience and expertise over many</p> <p>13 years, the data processors gather information on</p> <p>14 business records from reliable publically available</p> <p>15 sources like yellow pages, advertisements, and other</p> <p>16 sources that businesses use to self-identify as</p> <p>17 businesses in order to attract customers.</p> <p>18 And over the years, I have tested that data from</p> <p>19 various vendors through claims processing where primarily</p> <p>20 identified businesses were also identified as businesses</p> <p>21 or non-businesses were also identified as residential</p> <p>22 numbers during claims processing. And the accuracy rate</p> <p>23 that I measured over many years from various data</p> <p>24 processors were in upper 80s, mid 90s percentile, and I</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Apart from your own personal experience or</p> <p>2 professional experience, is there any source that you</p> <p>3 can point me to to confirm this is reliable, the data</p> <p>4 from PacificEast regarding business numbers or</p> <p>5 residential numbers?</p> <p>6 A. No.</p> <p>7 Q. If I understand it, please jump in if I'm getting</p> <p>8 this wrong -- as I understand your methodology at this</p> <p>9 step sort of involve two steps, one was giving an output</p> <p>10 from PacificEast and then there was also a keyword cross</p> <p>11 reference; is that accurate?</p> <p>12 A. Yes.</p> <p>13 Q. Let's talk about the first step, the output from</p> <p>14 PacificEast. To obtain an output, you took a set of</p> <p>15 telephone numbers and sent it to PacificEast and</p> <p>16 requested that they return data about whether the</p> <p>17 telephone number was residential or business; is that</p> <p>18 accurate?</p> <p>19 A. Yes.</p> <p>20 Q. Apart from the telephone number, did you provide</p> <p>21 any additional information to PacificEast at this step?</p> <p>22 A. We provided them with a few dates.</p> <p>23 Q. A few dates. Can you explain that to me a little</p> <p>24 more, please?</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. You think it is less than ten, but you can't 2 point to any hard data to support that; is that 3 accurate? 4 A. Correct. 5 Q. Are you aware of any published statistics on the 6 accuracy of PacificEast's data outputs, regarding 7 business telephone numbers? 8 A. No. 9 Q. If there were published statistics that stated 10 that the error rate for PacificEast outputs on business 11 telephone numbers was 20 percent, would that impact your 12 opinions in this case? 13 A. With the other steps that we take into consideration, 14 I don't think so. 15 Q. Okay. If there were published statistics stating 16 that PacificEast's error rate on these business data 17 outputs -- business telephone number data outputs, was 18 50 percent, would that change your opinions in this 19 case? 20 MR. PARONICH: Objection as to form. 21 Go ahead. 22 A. With additional steps that we describe -- I 23 describe in my report, I don't think so. 24 Q. If there were a one hundred percent error rate</p>	<p style="text-align: right;">Page 108</p> <p>1 A. As I said, over the years I have tested the data 2 through claims process and I found it reliable. So I do 3 know it is reliable, but I can't put a number to the 4 reliability, because I have not done that type of study 5 on that data. 6 Q. The entire basis for your conclusion that the 7 PacificEast data outputs are accurate, is your own 8 experience; is that fair? 9 A. In many cases where that methodology and 10 experience was approved by numerous Courts for multiple 11 reasons as well as the industry standard and standard by 12 a few government organizations that rely on PacificEast. 13 Q. Those Courts that allowed this method is based on 14 what you put in your report on those cases; correct? 15 A. Or other industry experts. 16 Q. I guess what I'm trying to get at is if somebody 17 wanted to see how reliable these data outputs were -- 18 like the Court or my client in this case, or a jury, if 19 we get there -- how could they check that beyond just 20 taking your word for it that your experience establishes 21 that these are reliable? 22 A. If I'm retained to provide an opinion on how that 23 would be checked, I could formulate a methodology. 24 Q. But you are offering the opinion in this case</p>
<p style="text-align: right;">Page 107</p> <p>1 from the PacificEast data outputs regarding the 2 identification of business telephone numbers, would that 3 impact your opinions in this case at all? 4 MR. PARONICH: Same objection. 5 Go ahead. 6 A. I don't think they would stay in business, but 7 the methodology would remain the same. We would just 8 use a different vendor. 9 Q. How would you know? Are you testing? 10 A. I would rely on published opinion that you just 11 stated would be stating that PacificEast is a hundred 12 percent inaccurate. If there was such a study and 13 published opinion, we would just use a different vendor. 14 Q. The fact is that you do know that there is some 15 error rate with respect to these outputs from PacificEast, 16 you just have no idea how large that error rate is; is 17 that fair? 18 MR. PARONICH: Objection, form. 19 You can answer. 20 A. Or how small it is. 21 Q. You don't know how great or how small, you have 22 no idea one way or the other; correct? 23 MR. PARONICH: Objection to form. 24 You can answer.</p>	<p style="text-align: right;">Page 109</p> <p>1 that this data is reliable, right? You say that many 2 times in your report? 3 A. Absolutely. 4 Q. I'm trying to understand how do we know that? I 5 hear you telling me, "Because I have got experience, I 6 am telling you that is the case." 7 Beyond that, how else can I be sure that these 8 data points are accurate? 9 MR. PARONICH: Objection as to form. 10 You can answer. 11 A. As I testified earlier, we tested the accuracy 12 during cases that we have administered through the 13 claims process. 14 We have also worked with counsel who had other 15 colleagues in the industry administer cases where I was 16 an expert where the data was verified and checked. The 17 cases, the notice methodology and the claims, were 18 accurate enough for various Courts to approve the usage 19 of PacificEast for those purposes. 20 So it is not just my experience alone. In 21 addition, PacificEast does work for Federal Trades 22 Commission and many other very large companies and is 23 considered to be an industry standard. And if the data 24 was inaccurate, it wouldn't be positioned that way</p>

<p style="text-align: right;">Page 110</p> <p>1 within the marketplace.</p> <p>2 Q. So the fact that a Court has accepted in the past</p> <p>3 your use of outputs from PacificEast as part of your</p> <p>4 methodology is, in your view, strong evidence that those</p> <p>5 reports are reliable for your purposes. Is that</p> <p>6 accurate?</p> <p>7 A. No.</p> <p>8 Q. Okay. I'm back to square one.</p> <p>9 I know you told me your experience tells me this</p> <p>10 and then you also mentioned some Court opinions. I'm</p> <p>11 trying to ask you, the Court opinions support this? And</p> <p>12 you are saying, no.</p> <p>13 It is fine if there is nothing else. I want to</p> <p>14 close the whole loop so that I'm not finding new things</p> <p>15 out later.</p> <p>16 Is there anything beyond your personal experience</p> <p>17 dealing with PacificEast that you could point to to</p> <p>18 confirm the accuracy of the data outputs that they</p> <p>19 provide?</p> <p>20 MR. PARONICH: Objection, form. Asked and</p> <p>21 answered.</p> <p>22 Go ahead.</p> <p>23 A. I will try to clarify using different words.</p> <p>24 There are dozens and dozens of cases that were</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. What expert opinions?</p> <p>2 A. The Courts found usage of PacificEast during</p> <p>3 notice and claims administration as well as expert</p> <p>4 opinions reliable.</p> <p>5 Q. That is kind of the question I asked before. I</p> <p>6 will try it again.</p> <p>7 I asked the question: Are you telling me that</p> <p>8 because you think that the fact that a Court approved</p> <p>9 the use of PacificEast data outputs in the past, is</p> <p>10 evidence that those outputs are reliable?</p> <p>11 A. In addition to my own experience and expertise,</p> <p>12 yes.</p> <p>13 Q. If the Court had rejected the use of PacificEast</p> <p>14 data for your purposes, would that also be an indication</p> <p>15 that it was unreliable?</p> <p>16 A. There are always exceptions to every standard.</p> <p>17 I would consider it and issue my own expert</p> <p>18 conclusion.</p> <p>19 Q. The Courts have excluded your opinions on use of</p> <p>20 PacificEast data outputs in the past, isn't that</p> <p>21 accurate?</p> <p>22 A. Once.</p> <p>23 Q. They also declined to rely on your opinions in</p> <p>24 other cases even if they didn't formally exclude them;</p>
<p style="text-align: right;">Page 111</p> <p>1 certified that labor used PacificEast for various</p> <p>2 appends. And the claims data that came in corresponded</p> <p>3 to the appends during the notice and claims and fund</p> <p>4 distribution stages by numerous claims administrators,</p> <p>5 not just my own experience, where the claims rate was</p> <p>6 approved by the Court and the programs and the usage of</p> <p>7 PacificEast was found reliable by the Courts, not just</p> <p>8 in my cases doing expert opinions, but there is an</p> <p>9 industry standard. And the industry standard is that</p> <p>10 PacificEast data is reliable for multiple reasons.</p> <p>11 Q. You are saying that the industry standard is that</p> <p>12 PacificEast data is reliable for distinguishing between</p> <p>13 residential and business telephone numbers?</p> <p>14 A. Yes.</p> <p>15 Q. When you say reliable, you can't tell me what</p> <p>16 that means in terms of what percent are going to be</p> <p>17 accurate and what percent are not, is that also true?</p> <p>18 A. Correct.</p> <p>19 Q. The way we know it is reliable, is that you</p> <p>20 are telling us it is reliable. And that you are telling</p> <p>21 us that Courts have approved use of PacificEast in</p> <p>22 claims administration notice procedures. Is that</p> <p>23 accurate?</p> <p>24 A. As well as in expert opinions.</p>	<p style="text-align: right;">Page 113</p> <p>1 isn't that also accurate?</p> <p>2 MR. PARONICH: Objection.</p> <p>3 Calls for speculation.</p> <p>4 A. The usage of data processes have been criticized</p> <p>5 in several cases.</p> <p>6 Q. By Courts?</p> <p>7 A. That's correct.</p> <p>8 Q. Cases in which you've served as an expert?</p> <p>9 A. That's correct.</p> <p>10 Q. Is that something that you put in your expert</p> <p>11 report?</p> <p>12 A. I believe Mr. Kostyun did, so I did not have to</p> <p>13 repeat it.</p> <p>14 Q. Well, you issued your reports on the same day,</p> <p>15 your initial reports, I don't recall seeing that in your</p> <p>16 report?</p> <p>17 A. I don't find the relevancy of it.</p> <p>18 Q. Of your opinions using the same methodology and</p> <p>19 vendors being excluded in the past by other Courts, you</p> <p>20 don't see that as relevant to the work in this case?</p> <p>21 A. The circumstances were very different in those</p> <p>22 other cases; therefore, I did not feel it is relevant to</p> <p>23 this particular case to include it.</p> <p>24 Q. Okay. We were talking about the error rates in</p>

<p style="text-align: right;">Page 114</p> <p>1 the PacificEast data outputs, right? There are really 2 two pieces to what they are providing you. One is this 3 either is or isn't a business number. That is one data 4 point. Right?</p> <p>5 A. Correct.</p> <p>6 Q. Was there also a data point where PacificEast 7 gave you a date range during which it believed a number 8 was or wasn't or could or couldn't have been a business 9 or residential number?</p> <p>10 A. That's correct.</p> <p>11 Q. So I know we talked about is it business, is it 12 not business? I now want to talk about the timeframe 13 issue.</p> <p>14 Do you have any knowledge, one way or the other, 15 about the degree of accuracy of those time ranges that 16 PacificEast provides in its reports?</p> <p>17 A. I don't have the actual percentage number that I 18 can cite.</p> <p>19 Q. Do you have any information at all regarding the 20 accuracy of those timeframes that PacificEast provided?</p> <p>21 A. My understanding is that as soon as the number 22 becomes publicly listed or advertised as business, it 23 gets picked up by data processors. Then when they stop 24 being listed or advertised, it is no longer associated</p>	<p style="text-align: right;">Page 116</p> <p>1 points in your report. 2 What industry are you referring to? 3 A. Litigation support services particularly class 4 action litigation.</p> <p>5 Q. There are other vendors who perform these 6 services as well; correct?</p> <p>7 A. Correct.</p> <p>8 Q. You have used those other vendors in other cases 9 in the past, for this purpose, correct?</p> <p>10 A. Yes.</p> <p>11 Q. One of those vendors is LexisNexis, correct?</p> <p>12 A. Yes.</p> <p>13 Q. You stopped using LexisNexis and now you use 14 PacificEast; correct?</p> <p>15 A. Correct.</p> <p>16 Q. You stopped using LexisNexis around the time that 17 one of your opinions was rejected by a Court as 18 unreliable because of its reliance and usage of those 19 results for that purpose; is that accurate?</p> <p>20 MR. PARONICH: Objection to form.</p> <p>21 You can answer.</p> <p>22 A. It is not accurate.</p> <p>23 Q. Can you tell why you switched from LexisNexis to 24 PacificEast for this purpose?</p>
<p style="text-align: right;">Page 115</p> <p>1 with a business and that is the end date of the association. 2 Q. I understand that is what PacificEast is trying 3 to do. My question is a little bit different. 4 Do you have any knowledge about how well they 5 perform that task? Specifically, how often they are 6 right? How often they are wrong, anything like that, 7 about those dates?</p> <p>8 A. I can't put the exact number of percentage of 9 accuracy.</p> <p>10 Q. Okay. Is PacificEast aware that you are using 11 its services for the purposes of preparing expert 12 reports in this case?</p> <p>13 A. They are aware that we usually use their services 14 for preparing expert reports. It is a standing 15 understanding and therefore we did make any special 16 arrangements for this particular case.</p> <p>17 Q. So there was no specific disclosure to 18 PacificEast that these results would be used for these 19 purposes, but you are telling me you think there is a 20 general understanding that they knew that; is that 21 accurate?</p> <p>22 A. That's correct.</p> <p>23 Q. You mentioned how PacificEast is recognized in 24 the industry. That phrase, I think, is at several</p>	<p style="text-align: right;">Page 117</p> <p>1 A. It was a business and relationship decision. 2 Q. What does that mean? 3 A. Business relationship with LexisNexis and 4 business relationship with PacificEast. We decided to 5 change our preferred provider to stay more competitive. 6 Q. Are you saying that it is cheaper to use 7 PacificEast? 8 A. Significantly. 9 Q. You are saying that you made the switch to reduce 10 your costs; is that accurate? 11 A. Well, reduce the cost for our clients. 12 Q. Sure. I wasn't suggesting you were running off 13 with the money, I just mean you are trying to reduce 14 costs, that was the reason for the change? 15 A. That's correct. 16 Q. The change had nothing to do with Lexis being 17 more or less accurate or PacificEast being more or less 18 accurate. Is that your testimony? 19 A. Yes, it is. 20 Q. You say that -- you said it was your understanding 21 that PacificEast pulls this information regarding 22 business telephone numbers from, I think you said 23 thousands, tens of thousands, of sources, can you tell 24 where that understanding comes from?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. From discussions at PacificEast. 2 Q. Who at PacificEast? 3 A. It was many years ago, I believe it was Mr. Rice. 4 Q. Scott Rice? 5 A. That sounds right. 6 Q. Let's move onto the second step in this part. We 7 talked about how you apply the outputs from PacificEast. 8 We talked about how you cross-reference those two lists. 9 Now, I want to talk about the second part where the 10 keywords come into play, are you with me? 11 A. Yes. 12 Q. You said that in your report, roughly, that -- 13 feel free to correct any rough edges here -- your team 14 applied the keyword list of 380 keywords that were 15 associated with businesses and they checked the 16 PacificEast outputs as a backup to see if these were 17 really the business numbers had gotten through. Is that 18 accurate? 19 A. Either business numbers have gotten through or 20 there were any home businesses that could be identified. 21 That's correct. 22 Q. So part of your methodology sort of assumes that 23 there will be some error rate in the business numbers 24 that are returned from PacificEast. Is that accurate?</p>	<p style="text-align: right;">Page 120</p> <p>1 search engines. 2 Q. Let's break them down. I'm not going to go 3 through them all. I want to be more targeted here. 4 Let's take Yelp, for example. When you say you 5 did searches on Yelp to identify common business names, 6 in what manner? What I mean by that is does Yelp have a 7 list somewhere of common business names or did you do it 8 by looking at a bunch different places on Yelp? How did 9 you go about doing that? 10 A. We started by looking at variations of Inc., 11 incorporations, I-N-C, incorporated, which words we used 12 the most. Same thing for company, was it C-O, did they 13 use Comp? Did they use Company? Did they use 14 Companies. So it was very basic research. 15 Q. I'm trying to get an understanding of the mechanics 16 of this research. When you say "research," are you 17 saying somebody spent sometime on Yelp looking at 18 different businesses and decided which terms it thought 19 -- the person thought were common among business. Are 20 you saying that Yelp has some published list of common 21 business terms that you imported to your list? I'm 22 trying to understand the mechanics here. 23 A. Thank you for clarifying. The first. 24 Q. So you guys -- you and your team were sort of --</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes, that is. 2 Q. Now, at this stage, this list of 380 keywords 3 that are supposed to be associated with businesses, who 4 created that? 5 A. I created that list as some suggestions from my 6 team. 7 Q. Okay. How do you collect the specific words that 8 you decided to put on that list along with your team. 9 A. It was a combination of the common sense and 10 research of most used commonly -- most often used common 11 business names. 12 Q. You used your common sense and you did some 13 research on what the most common used business names 14 are? 15 A. Yes. 16 Q. Was it you who performed that research or some 17 other person on your team? 18 A. It was myself and Christina Peters and Irina 19 Verkhovskaya. 20 Q. Where did you perform those searches or look for 21 resources regarding commonly used business names? 22 A. Various directories. 23 Q. Can you tell me what they were? 24 A. Yelp. Google. Yellow pages. And various other</p>	<p style="text-align: right;">Page 121</p> <p>1 I don't want to belittle it -- you were sort of poking 2 around on Yelp, looking at different sites, and I'm 3 saying All right, I'm seeing this term "Corp" come up a 4 lot on businesses, or "Inc.", or other variations on the 5 spelling. Is that sort of the process that led to the 6 generation of this 380 word list? 7 A. Correct. 8 Q. Who had final say as to whether a particular term 9 was business associated term or not? 10 A. I did. 11 Q. This list was created for purposes of this case 12 specifically; is that accurate? 13 A. No. We've had that list for many years and we 14 use it in many cases and that list is evolving as we get 15 more experience and do additional research. 16 Q. This is an evolved version of an older list that 17 you guys have honed through your experience. Is that 18 what you are telling me? 19 A. Yes. 20 Q. But apart from your people on your team poking 21 around on Yelp or Google or Yellow Pages and performing 22 their own subjective analysis of whether they think that 23 a term appears a lot in business names, is there more to 24 this creation of the list that I am leaving out?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. No.</p> <p>2 Q. At this step you teams take the output from</p> <p>3 PacificEast, they take the 380 keyword list, smash them</p> <p>4 together, and if something from the PacificEast output</p> <p>5 has one of your keywords on it, what happens next in</p> <p>6 your methodology?</p> <p>7 A. It gets removed from the potential class list.</p> <p>8 Q. Automatically or with some human intervention?</p> <p>9 A. We write a code to implement that.</p> <p>10 Q. Was there a judgment call by a human or was this</p> <p>11 simply they wrote the code and then the code applied to</p> <p>12 the universe?</p> <p>13 A. There is no judgment.</p> <p>14 Q. You put the terms in and if a term appeared on</p> <p>15 the outputs from PacificEast, your code was supposed to</p> <p>16 pull those folks off of your class list; correct?</p> <p>17 A. Correct.</p> <p>18 Q. I understand, we have had several different</p> <p>19 reports now, I think it is your testimony that there has</p> <p>20 been some changes to that population. Is that accurate?</p> <p>21 In your rebuttal, you note that your team</p> <p>22 inadvertently, through human error, failed to actually</p> <p>23 produce the list that had compared the keyword -- the</p> <p>24 380 keywords to the output from PacificEast; correct?</p>	<p style="text-align: right;">Page 124</p> <p>1 your team, used the correct file. Is that what you are</p> <p>2 saying?</p> <p>3 A. Correct.</p> <p>4 Q. So now, in your final class list, anything that</p> <p>5 hits on one of your 380 keyword list, should now be</p> <p>6 excluded from your final class list; correct?</p> <p>7 A. Correct.</p> <p>8 Q. In his rebuttal report, Mr. Kostyun did identify</p> <p>9 several examples of numbers that should have been</p> <p>10 excluded based on the keyword list that you and your</p> <p>11 team purported to use, but still appeared on the class</p> <p>12 list.</p> <p>13 Do you agree with that statement?</p> <p>14 A. Yes.</p> <p>15 Q. You said that you have Mr. Kostyun's report in</p> <p>16 front of you, his rebuttal, specifically?</p> <p>17 A. Yes.</p> <p>18 MR. SITTER: I'm going to mark that as</p> <p>19 Exhibit 2. Anthony, I take it you don't need a copy?</p> <p>20 MR. PARONICH: I don't. Anya, you have a</p> <p>21 rebuttal report. I'm good.</p> <p>22 (Document marked as Exhibit No. 2 for</p> <p>23 identification.)</p> <p>24 BY MR. SITTER:</p>
<p style="text-align: right;">Page 123</p> <p>1 A. That's correct.</p> <p>2 Q. That step, even though it is described in your</p> <p>3 original report, it wasn't actually performed in conjunction</p> <p>4 with the original class list, Exhibit J, to your</p> <p>5 original report. Is that correct?</p> <p>6 A. It was performed but the wrong file was attached.</p> <p>7 Q. Whose responsibility in your group is it to</p> <p>8 ensure that the correct file was attached?</p> <p>9 A. The final responsibility lies with me.</p> <p>10 Q. Okay. So we have this file with your original</p> <p>11 class list that we both agree has numbers that are</p> <p>12 associated with businesses and the reason is human error</p> <p>13 and they shouldn't have been on that original list.</p> <p>14 Do we agree on that?</p> <p>15 A. Yes.</p> <p>16 Q. Then many of those -- I guess many, if not all of</p> <p>17 those team members, were still on the list when you</p> <p>18 submitted your rebuttal report as well; is that</p> <p>19 accurate?</p> <p>20 A. Correct.</p> <p>21 Q. Then after rebuttal reports had been submitted,</p> <p>22 as you are preparing for your deposition, it is your</p> <p>23 testimony that you realized that the wrong file had been</p> <p>24 attached, and with your supplemental report, you and</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Okay. If you look at page 30, and feel free to</p> <p>2 flip around before and after pages 30 and 31, of Mr.</p> <p>3 Kostyun's rebuttal report, lists a number of telephone</p> <p>4 numbers and he is expressing that these appear to be</p> <p>5 business numbers even though they appeared on your</p> <p>6 original class list, Exhibit J. Correct? Is that your</p> <p>7 understanding as well?</p> <p>8 A. Yes.</p> <p>9 Q. At least to the degree that any of these numbers</p> <p>10 contain any of your keywords, they should no longer be</p> <p>11 on your final class list corrected Exhibit 2?</p> <p>12 A. Correct.</p> <p>13 Q. I will circle back on that. I will move on for</p> <p>14 now.</p> <p>15 Now, at this stage of your analysis -- now I'm</p> <p>16 back to your original report. I apologize for jumping</p> <p>17 around. In your original report at this stage, you</p> <p>18 state (as read) Using this process and after business</p> <p>19 related telephone numbers were removed from further</p> <p>20 analysis, I identified 71,549 non-business telephone</p> <p>21 numbers that received 345,526 texts. After adding Mr.</p> <p>22 Mantha to the list of potential class members, there</p> <p>23 were 71,550 telephone numbers that received 345,534</p> <p>24 texts. Correct? That is in your report?</p>

32 (Pages 122 - 125)

<p style="text-align: right;">Page 126</p> <p>1 A. Could you please let me know which paragraph? 2 Q. Paragraph 85. I can find a page number, too. 3 There we go. Are you with me? 4 A. Yes, paragraph 85. 5 Q. And the part I want to ask you about is -- you 6 have gone through this whole methodology to get to this 7 list of people who meet your criteria. And we get to 8 the last step, and you go through the business number 9 analysis, then at that step, you added plaintiff's 10 telephone number to your list manually. Is that 11 accurate? 12 A. Yes. 13 Q. He does not meet the criteria that the other 14 folks on that class list meet; right? 15 A. I have not done that analysis for Mr. Mantha. 16 Q. In your work on this case, you have not done any 17 analysis to see whether the named plaintiff meets the 18 criteria to belong on your class list. Is that 19 accurate? 20 MR. PARONICH: Objection. 21 You can answer. 22 A. I was directed by class counsel to add 23 Mr. Mantha. And I did not do any specific analysis for 24 his telephone number.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Just so we close the loop, no one on your team 2 did either; correct? 3 A. I don't think so. 4 Q. You are in charge of the team; right? 5 A. That's correct. 6 Q. So you would know, right? 7 A. Yes. 8 Q. And his number didn't appear on the opinion 2 9 numbers, correct? 10 A. That's my understanding. 11 Q. Plaintiff's telephone number didn't appear on the 12 opinion 3 numbers; right? 13 A. That's my understanding. 14 Q. Or the opinion 4 numbers either, right? 15 A. That's my understanding. 16 Q. He didn't appear on the opinion 5 numbers either 17 until you manually added him; is that correct? 18 A. That's correct. 19 Q. Are you aware of any literature in your field 20 that supports manually adding the named class representative 21 to a class list as part of a viable methodology? 22 A. I know that it has been done in a number of cases 23 based on legal theories. Other than that, I am not 24 aware of any other legal literature. Legal literature</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. So you added him because counsel told you you 2 should add his number to the list; correct? 3 A. Correct. 4 Q. You did not do any independent analysis regarding 5 or Mr. Mantha or his telephone number to confirm whether 6 he met any of the other criteria to be on your class 7 list; is that also accurate? 8 A. That's correct. 9 Q. That means -- you have at your report different 10 points where you talk about opinion one numbers, opinion 11 two numbers, opinion three numbers. 12 Do you know what I'm referring to here? 13 A. Yes. 14 Q. Mr. Mantha's number would not be in your opinion 15 one numbers; correct? 16 A. As I said, I did not. 17 Q. You don't know one way or the other? 18 A. Well, common sense dictates that if he would be, 19 I wouldn't be adding him here. But I did not do that 20 analysis. 21 Q. You have not checked specifically to see whether 22 plaintiff's telephone number appears in your opinion one 23 telephone numbers; correct? 24 A. I personally did not do that, no.</p>	<p style="text-align: right;">Page 129</p> <p>1 is not the area of my expertise. 2 Q. Let's take legal step out of it. 3 Are you aware of any literature in your field, 4 apart from Court opinions, that supports the manual 5 addition of the named class representative to a class 6 list as a viable method for ascertaining class 7 membership? 8 A. I have no opinions on ascertainability issues. 9 Q. I shouldn't use that word. Because that starts 10 people thinking about legal stuff, that's not what I 11 intended. 12 I guess what I'm saying is, Are you aware of any 13 literature in the field of data analysis that would say 14 you can propose methodology, apply that methodology all 15 the way through to everybody, and then not apply it to 16 one person, but just manually add them in? 17 A. If there is a legal basis for doing that, 18 plaintiff's counsel would know better than I would, if 19 such legal basis exists. 20 Q. Okay. But you are not aware of publications, 21 non-legal publications, that support that as a viable or 22 reliable method of data analysis? 23 A. I'm aware of the basis of Court opinions where it 24 has been done before. Does it count as legal</p>

<p style="text-align: right;">Page 130</p> <p>1 publications?</p> <p>2 Q. You seemed uncomfortable to go there, that's why</p> <p>3 I didn't want to push you to go there. That's why I was</p> <p>4 trying to I call out the legal stuff. So we could say,</p> <p>5 Okay, put the legal stuff aside.</p> <p>6 You said your fields are data analysis and I</p> <p>7 believe notice administration. I am wondering if there</p> <p>8 any publications. Any published support I could go look</p> <p>9 to, not a Court opinion, just whatever you guys use in</p> <p>10 your field that I could look at, and I could read it,</p> <p>11 and it would tell me, Yes, this is a viable approved</p> <p>12 method for identifying these individuals?</p> <p>13 A. Because this was a legal decision, I cannot</p> <p>14 really point you out to non-legal publications.</p> <p>15 Q. Okay. That's fine. Let's move on.</p> <p>16 Now, you state in this part of your report that</p> <p>17 at step 5, you did manually add plaintiff's telephone</p> <p>18 number to Exhibit J, which was your original class list;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. That didn't actually happen, right? Mr. Mantha's</p> <p>22 telephone number was not actually on your Exhibit J</p> <p>23 class list, was it?</p> <p>24 A. There was a typo in the area code but it was.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. If there is a typo in the telephone number, it is</p> <p>2 not plaintiff's telephone number anymore; right?</p> <p>3 A. Correct.</p> <p>4 Q. If you dial it, somebody might pick it up; right?</p> <p>5 A. If it exists, I don't know. I don't have</p> <p>6 knowledge one way or another.</p> <p>7 Q. The number that you added to your original class</p> <p>8 list, in an effort to add plaintiff's telephone number,</p> <p>9 you don't know if that is a real telephone number or</p> <p>10 not?</p> <p>11 A. If I did, I wouldn't make the typo.</p> <p>12 Q. Was there any particular member of your team who</p> <p>13 was in charge of making sure that plaintiff's telephone</p> <p>14 number appeared on the original class list, Exhibit J?</p> <p>15 A. The final responsibility lies with me.</p> <p>16 Q. Can we agree that was a mistake then, one of your</p> <p>17 mistakes or do you disagree with that statement?</p> <p>18 A. I do.</p> <p>19 Q. Okay. Now, I'm going to zoom way out. Let's</p> <p>20 talk about before you even did your first step in the</p> <p>21 analysis, you had a starting population of telephone</p> <p>22 numbers. Right?</p> <p>23 A. Correct.</p> <p>24 Q. Then at the first step, you cut out a lot of</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. I'm sorry, but if you get different numbers in a</p> <p>2 telephone number, it is not the same number; is it?</p> <p>3 A. In the rebuttal report it was expressly stated</p> <p>4 that there was a typo and it was corrected.</p> <p>5 Q. Right. I'm not talking about that yet. I will</p> <p>6 definitely give you an opportunity to talk about your</p> <p>7 rebuttal report as much as you want.</p> <p>8 Right now I'm talking about Exhibit J to your</p> <p>9 original report. Your original report states, (as read)</p> <p>10 I added plaintiff's telephone number to Exhibit J.</p> <p>11 We can agree that Exhibit J, which is the exhibit</p> <p>12 to your original report, does not actually have plaintiff's</p> <p>13 real telephone number on that list; correct?</p> <p>14 A. Because of the typo, that's correct.</p> <p>15 Q. Now, let's talk about the typo.</p> <p>16 You said in your rebuttal report, you changed the</p> <p>17 phone number to make sure that it was plaintiff's phone</p> <p>18 number, and inserted that into your Exhibit 2 list; is</p> <p>19 that accurate?</p> <p>20 A. Yes.</p> <p>21 Q. And the number that you had included in your</p> <p>22 list, in an attempt to include plaintiff's number, was</p> <p>23 actually somebody else's telephone number; right?</p> <p>24 A. Not to my knowledge.</p>	<p style="text-align: right;">Page 133</p> <p>1 those. But beginning with, you had a really large</p> <p>2 number of telephone numbers; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Was plaintiff's telephone number in that universe</p> <p>5 of telephone numbers?</p> <p>6 A. I did --</p> <p>7 Q. Your starting -- go ahead.</p> <p>8 A. I did not check but -- I don't think so, but I</p> <p>9 not check.</p> <p>10 Q. So you are not sure one way or the other if</p> <p>11 plaintiff's number was in the original starting</p> <p>12 population with which you began your analysis; correct?</p> <p>13 A. Correct.</p> <p>14 Q. If he were, let's assume he was, let's say his</p> <p>15 telephone number is in your starting population. Would</p> <p>16 you agree that your methodology would have eliminated</p> <p>17 plaintiff at the outset -- at very first step, because</p> <p>18 he did not have -- he was not in the Do Not Call</p> <p>19 records?</p> <p>20 A. I would have to analyze various hypotheticals.</p> <p>21 Q. We are only doing it hypothetically, because you</p> <p>22 are not sure if it was in there. If you are sure, I</p> <p>23 would go with what you sure with. But you don't know.</p> <p>24 I can represent to you, I think it was in that starting</p>

<p style="text-align: right;">Page 134</p> <p>1 population. I don't want to put words in your mouth. 2 If you disagree, you take it in a different direction. 3 I think it was in the starting population. 4 But your methodology is specifically geared 5 towards at the first step eliminating anyone who did not 6 appear in the Do Not Call files; correct? 7 A. Correct. 8 Q. If plaintiff's number is not in the Do Not Call 9 files, the first step in your methodology would have 10 eliminated him from the starting population; correct? 11 A. Unless there is a legal basis how he expressed 12 his desire to be on a Do Not Call Registry, which is 13 outside of the scope of my analysis. 14 Q. I'm not asking anything about a legal opinion. 15 I'm asking a mechanical data question regarding the 16 specific steps that you said you took in your expert 17 report. 18 You stated that one of the first steps that you 19 took was to eliminate numbers that appear in the Do Not 20 Call records. So if a number -- if it did not appear in 21 there -- if a number did not appear in the Do Not Call 22 files, it would have been pulled out as a mechanical 23 matter, not a legal matter, it would have been cut from 24 your list; correct?</p>	<p style="text-align: right;">Page 136</p> <p>1 your prior testimony that you have given so far that you 2 would like to change or amend? 3 A. Not that I can think of at this time. But thank 4 you. 5 Q. Let's move onto your last opinion, opinion 6, 6 which has to do with issuing notice to -- in accordance 7 with the Federal Rule of Civil Procedure 23. 8 I think it begins on page 32 of your report, 9 paragraph 88. 10 I want to start broadly trying to understand the 11 relationship in your mind between your opinions, 1 12 through 5, and your opinion 6. 13 Specifically, I'm trying to understand is opinion 14 6 stating the notice method that you propose to apply to 15 give notice to the individuals identified in steps 1 16 through 5 -- or opinions 1 through 5 in your report? 17 A. Opinion 6 relates to methodology described in 18 opinions 1 through 5. 19 Q. Can you expand on that a little for me, please? 20 A. Sure. It is typical that while the methodology 21 of experts remain the same, the application of that 22 methodology may or may not be corrected during -- or 23 altered during the litigation stages, because additional 24 information becomes available or addition data or there</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Correct. 2 Q. So to the degree that this is true for plaintiff; 3 i.e., that his number does not appear in one of the Do 4 Not Call files, your methodology would cut him from 5 potential class membership at the first step. Is that 6 accurate? 7 A. Without considering all of the different steps 8 that comprised the litigation, the mechanical step 9 would; correct. 10 Q. Okay. I want you to leave all those caveats in. 11 I want to be clear, you are saying that, yes, the first 12 step in your analysis would have cut plaintiff from the 13 population provided that he actually does not appear in 14 any of Do Not Call files. Accurate? 15 A. Correct. 16 MR. SITTER: Let's take a break here. Is 17 that all right with everyone? 18 MR. PARONICH: Sure. That's fine. 19 (Break in the proceedings.) 20 MR. SITTER: We are back on the record after 21 a short break. 22 BY MR. SITTER: 23 Q. Ms. Verkhovskaya, we have going for a while here. 24 I want to give you an opportunity, is anything about</p>	<p style="text-align: right;">Page 137</p> <p>1 are meetings between parties that decide to stipulate to 2 certain things. 3 So my opinion 6 is basically stating that with 4 the methodology that I described, through opinions 1 5 through 5, there is an efficient and effective way based 6 on the data produced in discovery to effectuate proper 7 notice protocol that is standard within the industry and 8 meets Federal Rules of Civil Procedure and due process 9 requirements. 10 Q. Okay. Federal Rule of Civil Procedure 23 is a 11 legal rule and due process is a legal concept. And we 12 talked several times today about how you are not a 13 lawyer. So I want to be clear, Are you offering a legal 14 opinion regarding your methodology complying with either 15 Federal Rule of Civil Procedure 23 or with due process 16 rights under the United States or any state's 17 constitution? 18 MR. PARONICH: Objection. 19 You can answer. 20 A. As a notice expert, my work as a notice 21 administrator is governed by Rule 23. And Rule 23 22 outlines certain steps and certain criteria that all 23 notice administrators have to meet to prepare a notice 24 plan and a notice expert report upon effectuation of the</p>